

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHEILA J BEAL

Claimant

APPEAL NO. 10A-UI-12271-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER

Employer

OC: 07/18/10

Claimant: Appellant (1)

Section 96.5(1) – Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Sheila Beal, filed an appeal from a decision dated August 18, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 20, 2010. The claimant participated on her own behalf and was represented by Luke Guthrie. The employer, Covenant Medical Center, participated by Director of Environmental Services Randy Vorland, Supervisor of Environmental Services Steve Horan, and Human Resources Director Suzanne Burt, and was represented by Jay Heitman. Workforce Advisor Aaron Hoard participated. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last known address of record on August 18, 2010. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 28, 2010, which was a Saturday. The appeal date was therefore extended to August 30, 2010. The appeal was not filed until September 1, 2010, which is after the date noticed on the decision.

The claimant received the decision but did not open it for several days. When she did open it, she did not read it and waited a few more days before taking it to her attorney, who filed the appeal on her behalf.

Ms. Beal maintained she was on medication that made it hard for her to understand what was going on. But, immediately after her separation, she consulted an attorney, filled out an application for unemployment benefits, has filed weekly claims for 13 weeks without incident, and made two job contacts every week.

In addition, the appeal letter contended that Workforce Advisor Aaron Hoard had agreed to send a copy of the decision to the claimant's attorney. No such promise was made, because it is not possible to add parties to the automated decision system.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge does not find the claimant's contention credible that medication has caused her confusion for the past several months to the extent she was unable to understand what was going on. The record of her unemployment claim shows that she is capable of taking action, navigating the claims phone system, filling out applications for employment, and consulting with her attorney.

The attorney may have participated in the hearing and the call may have been taken in his office with the claimant, but this does not mean the attorney would be receiving a copy of the decision directly. No promise was made to him by the workforce advisor that he would be receiving a decision.

DECISION:

The representative's decision dated August 18, 2010, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is disqualified for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw