

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J ANANT
Claimant

APPEAL NO. 11A-UI-12456-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BGS ENTERPRISE INC
Employer

OC: 06/12/11
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 6, 2011, reference 02, that held he was not eligible for benefits the week ending June 21, 2011 due to receiving vacation pay. A telephone hearing was scheduled for October 17, 2011. The claimant did not participate. The employer submitted documents in lieu of personal participation. Official Notice was taken of Claimant's appeal.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The claimant received the department decision mailed to his address of record on September 6, 2011 with an appeal deadline date of September 16. The claimant submitted an appeal postmarked on September 19, 2011.

Claimant was not available when called for the hearing at the phone number he provided. The employer submitted documents.

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 concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for his appeal delay.

DECISION:

The department decision dated September 6, 2011, reference 02, is affirmed. The claimant failed to file a timely appeal. The department decision holding claimant not eligible for benefits for the week ending June 21, 2011, due to receiving vacation pay, remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw