

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LADD L MUZZY
Claimant

SAI GLOBAL COMPLIANCE
Employer

APPEAL 19A-UI-07859-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/28/19
Claimant: Appellant (1)

Iowa Code § 96.19(18)(a) – Definitions – Employment
Iowa Admin. Code r. 871-23.19 – Tax – Er/Ee, independent contractor
Iowa Code § 96.6(2) – Filing – Timely appeal

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the September 19, 2019 (reference 05) unemployment insurance decision that denied claimant's request to have wages added to his claim. A hearing was scheduled in this matter for October 29, 2019 but was continued upon the parties' request in order to submit proposed exhibits. The parties waived 10-day notice on the record. The parties were properly notified of the rescheduled hearing. A telephone hearing was held on November 5, 2019, at 8:00 a.m. Claimant participated. Employer participated through Keri Greenblatt, Human Resources Operations Manager for the Americas. Claimant's Exhibits A – F and Z were admitted. Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant worked for the employer as an employee.
Whether wages should be added to the claim.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 2880 Sunset Drive, New Smyrna Beach, Florida on September 19, 2019. That was claimant's correct address on that date. Claimant does not know when he received the decision. Claimant typically receives mail from Des Moines, Iowa in New Smyrna Beach, Florida within three to four days.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 29, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. September 29, 2019 fell on a Sunday; therefore, the appeal deadline was extended to Monday, September 30, 2019. Claimant appealed the decision online and via facsimile on October 8, 2019. Claimant's appeal was received by Iowa Workforce Development on October 8, 2019.

Claimant's reason for not submitting his appeal sooner was that he had other fact-finding interviews with Iowa Workforce Development regarding his employment with SAI Global Compliance and, therefore, did not believe the issue was resolved. None of the IWD employees told claimant not to file his appeal of the decision issued on September 19, 2019 (reference 05).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was not timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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.

Claimant received the decision prior to the due date. Claimant submitted his appeal eight days after the due date. The appeal instructions on the unemployment insurance decision are clear. Claimant's delay in filing his appeal was due to his confusion – not to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 19, 2019 (reference 05) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn