

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CORY C BINGHAM
Claimant

DSM PROPERTY MANAGEMENT LLC
Employer

APPEAL NO. 21A-UI-22328-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Cory Bingham, filed a late appeal from the November 18, 2020, reference 05, decision that denied benefits effective August 23, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on December 2, 2021. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. There were four appeal numbers set for a consolidated hearing: 21A-UI-22328-JTT, 21A-UI-22330-JTT, 21A-22332-JTT, and 21A-UI-22333-JTT. Exhibit A, the online appeal was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, KCCO, and the reference 05, 06, 07 and 08 decisions.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 29, 2020.

On November 18, 2020, Iowa Workforce Development Benefits Bureau mailed a reference 05 decision to the claimant's Boone last-known address of record. The reference 05 decision denied benefits effective August 23, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. The reference 05 decision stated that the decision would become final unless an appeal was postmarked by November 28, 2020 or was received by the Appeal Section by that date. The reference 05 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 28, 2020 was a Saturdays and November 30, 2020 was the next working day. The claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant read far enough into the decision to read that the decision denied benefits. The claimant did not read the portion of the decision that set forth appeal rights

and the appeal deadline. The claimant did not take steps to file an appeal from the decision by the November 30, 2020 extended appeal deadline or at any time prior to October 7, 2021.

On October 4, 2021, Iowa Workforce Development mailed the reference 06, 07, and 08 overpayment decisions to the claimant's Boone last-known address of record. The reference 06 and 07 decisions indicated the overpayment decision was prompted by the earlier decision that denied benefits. The reference 06, 07 and 08 decisions included an October 14, 2021 deadline for appeal.

On October 7, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received appeal on October 7, 2021 and treated it as an appeal from the reference 05, 06, 07 and 08 decisions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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 evidence in the record establishes an untimely appeal from the November 18, 2020, reference 05, decision. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the extended November 30, 2020 deadline, but did not file an appeal until October 7, 2021. The appeal, as it relates to the November 18, 2020, reference 05, decision was unreasonably delayed. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). There is not good cause to treat the late appeal as a timely appeal. Because the appeal from the reference 05 decision was untimely, the administrative law judge lacks jurisdiction to disturb the reference 05 decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the November 18, 2020, reference 05, decision was untimely. The decision that denied benefits effective August 23, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law remains in effect.



James E. Timberland
Administrative Law Judge

January 6, 2022
Decision Dated and Mailed

jet/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.