

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARANDA L ESPARZA
Claimant

APPEAL 20A-UI-15811-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOHO KITCHEN AND BAR INC
Employer

**OC: 02/09/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Maranda Esparza (claimant) appealed a representative's May 14, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Soho Kitchen and Bar (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2021. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge spoke to a person who indicated the employer was not available. A message was left for the employer.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-15811.S1, 20A-UI-15812.S1, and 20A-UI-15813.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits in March 2020, and a worker backdated her claim to February 9, 2020. Her weekly benefit amount was determined to be \$254.00. The Agency sent the employer notice of the claimant's claim on April 7, 2020. It timely protested the claim on April 15, 2020. A fact-finding interview was scheduled for May 13, 2020.

The claimant received benefits of \$254.00 per week from March 15, 2020, to the week ending May 9, 2020. This is a total of \$2,032.00 in state unemployment insurance benefits after March 15, 2020. She also received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending May 9, 2020. The fact-finding interview was held on May 13, 2020.

After the interview, a disqualification decision was mailed to the parties' last known address of record on May 14, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 26, 2020. The claimant chose not to appeal the decision because she agreed that she quit work. She did not notice the first sentence of the decision "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay."

She filed for Pandemic Unemployment Assistance (PUA) and was denied benefits in a decision dated July 9, 2020. She did not appeal the denial of PUA. The claimant moved to Pennsylvania but did not notify the Agency of an address change. She applied for unemployment insurance benefits and was denied benefits in Pennsylvania.

The claimant returned to Iowa and did not notify the employer of the new address in Iowa. An overpayment decision was mailed to claimant's last known address of record on October 26, 2020. She received the decision on or about November 11, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 5, 2020. The appeal was filed on November 11, 2020. On November 5, 2020, the Agency also mailed the claimant a decision finding her overpaid Federal Pandemic Unemployment Compensation. The claimant filed an appeal to all three decision on November 11, 2020, after she received the overpayment 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.

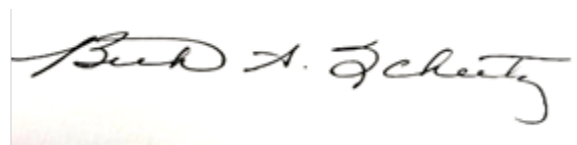
The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 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).

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. She chose not to file an appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 14, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is not eligible to receive unemployment insurance benefits.



Beth A. Scheetz
Administrative Law Judge

February 12, 2021
Decision Dated and Mailed

bas/kmj