

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN A DIAMOND

Claimant

APPEAL NO. 15A-UI-09114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEARERS FOODS BURLINGTON LLC

Employer

OC: 04/26/15

Claimant: Appellant (1)

Iowa Code Section 96.5(3) - Refusal of Suitable Work

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Nathan Diamond filed an appeal from the July 28, 2015, reference 01, decision that disqualified him for benefits based on an Agency conclusion that he refused suitable work on June 16, 2015 without good cause. After due notice was issued, a hearing was held on September 2, 2015. Mr. Diamond participated. At the time of the hearing, the employer was not available at the number the employer had provided for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-09115-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and the Agency's record of wages reported for the claimant (WAGE-A and WAGE-B).

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: On July 28, 2015, Iowa Workforce Development mailed a copy of the July 28, 2015, reference 01, decision to claimant Nathan Diamond at his last-known address of record. The decision disqualified Mr. Diamond for benefits based on an Agency conclusion that he had refused suitable work without good cause on June 16, 2015. The decision carried a warning that an appeal from the decision must be postmarked by August 7, 2015 or received by the Appeals Section at Workforce Development by that date. Mr. Diamond received the decision in a timely manner prior to the deadline for appeal. On August 6, 2015, Mr. Diamond accessed the Workforce Development website and some steps that he thought resulted in the electronic filing of an appeal. However Mr. Diamond's efforts did not result in the transmission or filing of an appeal and the Appeals Section did not receive an appeal in connection with those efforts. Because no appeal was received at that time, no appeal was docketed at that time.

On August 5, 2015, Workforce Development mailed a copy of the August 5, 2015, reference 02, decision to Mr. Diamond at his last-known address of record. That decision said that Mr. Diamond was overpaid \$1,664.00 in benefits for the four weeks between June 14, 2015 and July 11, 2015 based on the earlier decision that disqualified him for benefits. The deadline for filing an appeal from the August 5, 2015, reference 02, decision was August 15, 2015. On August 13, 2015, Mr. Diamond filed an appeal by email. In the appeal, Mr. Diamond indicated that he was appealing from the reference 02 decision that he had received on August 11, 2015. The Appeals Section received the appeal on August 13, 2015 and docketed an appeal on that date. The Appeals Section treated Mr. Diamond's appeal from the overpayment decision as also an appeal from the disqualification decision that prompted the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

The evidence in the record establishes that Mr. Diamond took some steps towards filing an electronic appeal from the July 28, 2015, reference 01, disqualification decision on August 6, 2015, but did not take all of the necessary steps to successfully file or transmit an appeal on that date. Had an appeal been transmitted and received on that date, the appeal would have been docketed on that date. Because the Agency did not receive an appeal on that date, no appeal was docketed. The only appeal received by the agency from Mr. Diamond was the emailed appeal on August 13, 2015. That appeal was filed six days beyond the deadline for appealing from the July 28, 2015, reference 01, disqualification decision.

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). 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 that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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 July 28, 2015, reference 01, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits based on an Agency conclusion that he refused suitable work on June 16, 2015 without good cause, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs