

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARREN J COPPOCK
Claimant

APPEAL NO. 07A-UI-03178-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**OC: 01/14/07 R: 01
Claimant: Appellant (1)**

Iowa Code section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Darren Coppock filed an appeal from the February 26, 2007, reference 01, decision that denied. After due notice was issued, a hearing was held by telephone conference call on April 12, 2007. Mr. Coppock participated. Staffing Specialist Todd Ashenfelter represented the employer. The administrative law judge received Department Exhibits D-1, D-2 and D-3 into evidence. The parties waived formal notice of the issue of whether the claimant has been able to work and available for work since establishing his claim for benefits. The hearing in this matter was consolidated with the hearing in appeal number 07A-UI-03179-JTT.

ISSUES:

Whether the claimant's appeal was timely.

Whether there is good cause to deem the claimant's late appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The February 26, 2007, reference 01, decision denying benefits was mailed to Darren Coppock's last-known address of record on February 26, 2007. Mr. Coppock received the decision prior to the March 8, 2007 deadline for appeal. The March 14, 2007, reference 03, overpayment decision was mailed to Mr. Coppock's last-known address on March 14, 2007. Mr. Coppock received this decision in a timely fashion, prior to the March 24, 2007 deadline for appeal set forth on that decision. Because March 24 fell on a Saturday, the deadline for appeal of the reference 03 overpayment decision was extended to Monday, March 26. The overpayment decision further alerted Mr. Coppock to the prior, reference 01, decision denying benefits in connection with his separation from Manpower International. Mr. Coppock delivered his appeal to the Clarinda Workforce Development Center on March 28, 2007 and the Clarinda Workforce Development Center staff faxed the appeal to the Appeal Section on March 28 at 3:51 p.m.

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, 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 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 administrative law judge concludes there is good cause to amend the ruling the administrative law judge made during the hearing with regard to the timeliness of the claimant's appeal. The claimant's testimony throughout the hearing established that the claimant is an unreliable historian regarding his conduct and events wherein time is of the essence. The claimant's testimony throughout the hearing established a high likelihood that the claimant did in fact receive the February 26, 2007, reference 01, decision denying benefits in a timely fashion, prior to the deadline for appeal. The greater weight of the evidence shows that the claimant/appellant did have a reasonable opportunity to file a timely appeal of the February 26, 2007, reference 01, decision.

No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c). Again, the claimant's testimony throughout the hearing provides good cause to amend the ruling the administrative law judge made during the hearing with regard to timeliness of the claimant's appeal. The claimant's testimony throughout the hearing establishes a high likelihood that the claimant delayed delivering his appeal to the Clarinda Workforce Development Center until March 28, 2007. Thus, even if the greater weight of the evidence demonstrated the claimant did not become aware of the February 26, 2007, reference 01, decision until he received the March 14, 2007, reference 03, overpayment decision, the evidence established that the claimant unreasonably delayed filing his appeal.

The administrative law judge 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 Agency representative's February 26, 2007, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs