

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY L HOWELL
Claimant

APPEAL NO. 10A-UI-00136-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & CO (01-RF) WATERLOO FNDRY
Employer

OC: 07/12/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Danny Howell filed an appeal from the October 21, 2009, reference 02, decision that denied benefits for the week ending October 10, 2009. After due notice was issued, a hearing was held by telephone conference call on February 12, 2010. Mr. Howell participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Department Exhibits D-1 and D-2 were received into evidence. The hearing in this matter was consolidated with the hearing in appeal number 10A-UI-00137-JTT.

ISSUES:

Whether there is good cause to treat Mr. Howell's late appeal from the October 21, 2009, reference 02 ,decision as a timely appeal. There is.

Whether Mr. Howell was temporarily laid off from his employment at Deere & Company during the week that ended October 10, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 21, 2009, a Workforce Development representative entered a reference 02 decision that denied benefits for the week ending October 10, 2009, based on an agency conclusion that Mr. Howell was at work full time that week and could not be considered "available" for work under Iowa Code section 96.4(3). On October 21, 2009, Workforce Development mailed a copy of the reference 02 decision to Mr. Howell at his last-known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 31, 2009. Mr. Howell received a decision in a timely manner prior to the deadline for appeal. Mr. Howell took the decision to the employer and the employer agreed to take steps to resolve the matter with Workforce Development. Prior to the deadline for appeal, Mr. Howell also contacted his local Workforce Development Center and was told by a Workforce representative that the matter appeared to be resolved. Based on that information, Mr. Howell took no additional steps to file an appeal at that time.

On December 29, 2009, Workforce Development mailed the reference 03 overpayment decision to Mr. Howell. The decision said that Mr. Howell had been overpaid \$484.00 for the week ending October 10, 2009, based on the decision dated October 21, 2009. The reference 03 decision carried a January 8, 2010 deadline for appeal. On December 30, 2009 Mr. Howell drafted an appeal. Mr. Howell mailed the appeal. The appeal was postmarked December 31, 2009.

During the week that ended October 10, 2009, Mr. Howell was temporarily unemployed from his employment at Deere & Company while the workplace was closed for inventory. Mr. Howell was not involved in the inventory. The employer erroneously left Mr. Howell's name off the list it provided to Workforce Development regarding the employees who were temporarily laid off for the week in question.

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 appeal in this matter was mailed on December 31, 2009, the postmark date on the envelope.

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, but reasonably relied upon the Workforce representative's statement that the matter appeared to be resolved. The administrative law judge concludes that the Workforce Development representative's statement contributed to the appeal being late. There is good cause to deem the late appeal timely. See 871 IAC 24.35(2). The administrative law judge has jurisdiction to hear the appeal and rule on the merits of the appeal.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since,

under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence in the record indicates that Mr. Howell was temporarily unemployed during the week that ended October 10, 2009. Mr. Howell is eligible for benefits for that week, provided he is otherwise eligible.

DECISION:

There is good cause to deem the claimant's appeal timely. The Agency representative's October 21, 2009, reference 02, decision is reversed. The claimant was temporarily unemployed during the week that ended October 10, 2009. The claimant is eligible for benefits for that week, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css