

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN L STEWART
Claimant

APPEAL NO. 09A-UI-11833-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/14/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Dustin Stewart filed an appeal from the July 27, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 1, 2009. Mr. Stewart participated. The employer representative was not available at the number the employer provided for the hearing and did not participate. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

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: On July 27, 2009, Workforce Development mailed a copy of the reference 03, decision to Dustin Stewart's last-known address of record on Third Street in Waterloo. This was where Mr. Stewart resided at the time he established his claim for benefits on June 14, 2009 and the address Mr. Stewart had provided to Workforce Development. The reference 03 decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 6, 2009.

On or about July 20, 2009, Mr. Stewart moved out of his residence on Third Street and into the Pathways rehabilitation facility in Waterloo. Mr. Stewart completed and submitted a United States Postal Service change of address form to have his mail forwarded to his grandmother's residence in Cedar Falls. Pursuant to Mr. Stewart's forwarding request, the reference 03 decision was directed by the United States Postal Service to his grandmother's residence in Cedar Falls. Mr. Stewart does not know when his grandmother received the reference 03 decision, how long she had it before she brought it to him at the Pathways facility, or how long he had the decision before he took steps to file an appeal. Mr. Stewart got out of the Pathways facility on August 10, 2009.

On August 18, 2009, Mr. Stewart went to his local Workforce Development Center, completed an appeal form, and left the appeal form with the Workforce Development staff. The Appeals Section received the appeal on August 18, 2009.

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). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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 weight of the evidence indicates that Mr. Stewart did have a reasonable opportunity to file a timely appeal. The decision was mailed to Mr. Stewart on July 27, 2009. The appeal deadline was August 6, 2009. The weight of the evidence indicates that the reference 03 decision was received at Mr. Stewart's grandmother's residence prior to the deadline for appeal. There is no evidence to suggest otherwise. The record indicates that Mr. Stewart had the decision in hand for some time before he left the Pathways facility on August 10, 2009. Mr. Stewart then waited another eight days before he took steps to file an appeal. The appeal was filed on August 18, 2009, when Mr. Stewart delivered the completed appeal to the Workforce Development staff.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c). The weight of the evidence indicates that even if the administrative law judge were to conclude there was good cause to delay filing the appeal until the August 10 discharge from the Pathways program, the evidence indicates further unreasonable delay after that point.

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. 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 Agency representative's July 27, 2009, reference 03, 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