

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWIGHT D ELM
Claimant

APPEAL NO. 12A-UI-06948-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMERS COOPERATIVE COMPANY
Employer

**OC: 02/27/11
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Dwight Elm filed an appeal from an overpayment decision and the Appeals Section treated the appeal as also an appeal from the March 30, 2012, reference 08, decision that denied benefits in connection with an April 7, 2011 discharge from Farmers Cooperative Company. Mr. Elm requested an in-person hearing. After due notice was issued, a hearing was held in Carroll on November 16, 2012. Mr. Elm participated. Tod Drake represented the employer. The hearing was consolidated with the hearing in Appeal Number 12A-UI-06949-JT and 12A-UI-13627-JT. Department Exhibits D-1 through D-5 were received into evidence.

ISSUE:

Whether Mr. Elm's appeal from the March 30, 2012, reference 08, decision was timely. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 30, 2012, a Workforce Development mailed two decisions to Dwight Elm at his last-known address of record. Both decisions disqualified Mr. Elm for unemployment insurance benefits based on an April 7, 2011 discharge from Farmers Cooperative Company. The first decision was the March 30, 2012, reference 08, decision entered in connection with a claim year that started on February 27, 2011. The second was the March 30, 2012, reference 01 decision entered in connection with a new claim year that started on February 26, 2012. Both decisions included a warning that an appeal from the decision must be postmarked or received by the Appeals Section no later than April 9, 2012. Both decisions arrived at Mr. Elm's address in a timely manner, prior to the deadline for appeal. Mr. Elm had traveled out of town in search of new employment prior to the fact-finding interview that led the March 30, 2012 decisions. Mr. Elm was out of town when he participated in the fact-finding interview, but did not alert the Workforce Development representative to that fact or request that the decisions regarding his eligibility for benefits be directed anywhere other than his address of record. Both decisions were waiting in Mr. Elm's mail when he arrived home on or about April 10, 2012. Mr. Elm reviewed the decisions and saw that the deadline for appeal had passed. Mr. Elm did not take

any steps to appeal either disqualification decision until after he received the June 5, 2012, reference 09, overpayment decision that was mailed to him on June 5, 2012. In response to the overpayment decision, Mr. Elm prepared an appeal letter that he mailed to the Appeals Section. The postmark in which the appeal arrived bears a June 12, 2012 postmark.

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 question was filed on June 12, 2012, the postmark date on the envelope in which the appeal was mailed.

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 Mr. Elm would have had a reasonable opportunity to file a timely appeal from both decisions if he had made provisions for handling or redirecting his incoming mail during the extended period he was out-of-town. The failure to file the appeal by the April 9, 2012 deadline 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 appeal was not timely filed pursuant to Iowa Code section 96.6(2). Both disqualification decisions became final agency decisions. The administrative law judge lacks jurisdiction to disturb the disqualification decisions or to make a ruling on the merits of Mr. Elm's appeal from those decision concerning his separation from the employment with Farmers Cooperative Company. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

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 Iowa Admin. Code section 871 IAC 24.35(2)(c).

Even if the administrative law judge had concluded that Mr. Elm did not have a reasonable opportunity to file an appeal by the April 9 deadline because he did not return home and see the disqualification decisions until April 10, 2012, Mr. Elm's delay until June 12, 2012 to file an appeal that might include appeal from those decisions was an unreasonable delay.

DECISION:

The Agency representative's March 30, 2012, reference 08, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits based on the April 7, 2011 discharge remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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