

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS J HAYES**  
Claimant

**APPEAL NO. 16A-UI-05969-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN WECHEL INC**  
Employer

**OC: 01/17/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(3)(a) – Work Refusal  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Nicholas Hayes filed an appeal from a May 19, 2016, reference 02, overpayment decision that the Appeals Bureau treated as also an appeal from the May 6, 2016, reference 01, decision. The present matter concerns the reference 01 decision that disqualified Mr. Hayes for benefits, based on an agency conclusion that he had refused recall to suitable work with Van Wechel, Inc. on March 14, 2016. After due notice was issued, a hearing was held on June 15, 2016. Mr. Hayes participated. Chad Van Wechel represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-05970-JTT. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits A, D-1 and D-2 into evidence.

**ISSUE:**

Whether the appeal from the May 6, 2016, reference 01, decision 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 May 6, 2016, Iowa Workforce Development mailed a copy of the May 6, 2016, reference 01, decision to Nicholas Hayes at his last-known address of record. The decision disqualified Mr. Hayes for benefits, based on an agency conclusion that he had refused recall to suitable work with Van Wechel, Inc. on March 14, 2016. Mr. Hayes received the decision in a timely manner, prior to the deadline for appeal, but did not take any steps to file an appeal from the reference 01 decision by the appeal deadline. The decision warned that an appeal from the decision must be postmarked by May 16, 2016 or be received by the Workforce Development Appeals Section by that date.

On May 19, 2016, Iowa Workforce Development mailed a copy of the May 19, 2016, reference 02, decision to Mr. Hayes at his last-known address of record. The reference 02 decision held that Mr. Hayes was overpaid \$2,390.00 in benefits for the five weeks between March 13, 2016 and April 16, 2016. The overpayment decision indicated on its face that it was

based on the early decision that disqualified Mr. Hayes for unemployment insurance benefits in connection with the purported work refusal. Mr. Hayes received the reference 02 in a timely manner, prior to the May 29, 2016 deadline for appealing that decision.

On May 25, 2016, Mr. Hayes drafted and mailed his appeal from the May 19, 2016, reference 02, decision. The appeal envelope is postmarked May 25, 2016. The Appeals Bureau received the appeal from the overpayment decision on May 27, 2016 and treated it as also as a late appeal from the May 6, 2016, reference 01, 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).

Mr. Hayes' appeal was filed on May 25, 2016, the postmark date that appears on the appeal envelope.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the May 6, 2016, reference 01, disqualification decision and May 25, 2016, when the 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 Mr. Hayes did have a reasonable opportunity to file a timely appeal from the May 6, 2016, reference 01, disqualification decision by the May 16, 2016 appeal deadline, but delayed filing an appeal until May 25, 2016. It was the May 19, 2016, reference 02, overpayment decision that prompted the appeal. The appeal was filed nine days after the deadline for filing an appeal from the May 6, 2016, reference 01, disqualification decision. Because the late filing of the appeal, as it relates to the May 6, 2016, reference 01, decision was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Mr. Hayes has failed to preserve his right to challenge the May 6, 2016, reference 01, decision and the administrative law judge lacks jurisdiction to disturb the May 6, 2016, reference 01, decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

#### **DECISION:**

The May 6, 2016, reference 01, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified Mr. Hayes for benefits, based on an agency conclusion that he had refused recall to suitable work with Van Wechel, Inc. on March 14, 2016, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs