

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUGO JIMENEZ

Claimant

APPEAL NO. 15A-UI-11423-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRAMER AND ASSOCIATES INC

Employer

OC: 12/21/14

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Hugo Jimenez filed a late appeal from the September 28, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Jimenez had voluntarily quit on September 9, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 28, 2015. Mr. Jimenez participated. Robert Cramer represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat Mr. Jimenez's late appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 24, 2015, an Iowa Workforce Development Claims Deputy held a fact-finding interview to address Hugo Jimenez's September 9, 2015 separation from Cramer and Associates, Inc. Mr. Jimenez participated in the fact-finding interview. During the fact-finding interview, the Claims Deputy told the parties that they could expect to receive the Deputy's decision in the following days. During the fact-finding interview, the Claims Deputy advised the parties of their appeal rights in connection with the decision that the Deputy would be entering.

On September 28, 2015, Iowa Workforce Development mailed a copy of the September 28, 2015, reference 01, decision to Mr. Jimenez at his last-known address of record. Mr. Jimenez's address of record is a post office box in South Sioux City, Nebraska. Mr. Jimenez generally checks his post office box for mail once a week, on Saturdays. Mr. Jimenez does not know when he had last checked his post office box on or before September 28, 2015. Mr. Jimenez does not know when he next checked his post office box on or after September 28, 2015. The September 28, 2015, reference 01, decision disqualified Mr. Jimenez for benefits and relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Jimenez had voluntarily quit on September 9, 2015 without good cause attributable to the employer. The decision contained a warning that an appeal from the decision must be postmarked by October 8, 2015 or received by the Appeals Section by that date. The decision arrived at

Mr. Jimenez's post office box in a timely manner, prior to the deadline for appeal. Mr. Jimenez does not know how he had the decision in his possession prior to taking steps to appeal from the decision. On October 13, 2015, Mr. Jimenez went to the Sioux City Workforce Development Center, completed an appeal form, and delivered the completed form to the Center staff. Mr. Jimenez dated the form October 13, 2015. The Center staff marked the form as being received by them on October 13, 2015. On October 14, 2015, the Sioux City Workforce Development Center staff faxed the appeal form the Appeals Section. The Appeals Section received the appeal on October 14, 2015. The steps Mr. Jimenez took as of October 13, 2015 were the first steps he took towards filing an appeal from the September 28, 2015, 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. Jimenez's appeal was filed on October 13, 2015; when he hand delivered the completed form to the Sioux City Workforce Development Center staff.

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. The weight of the evidence establishes that the September 28, 2015, reference 01, decision was received at Mr. Jimenez's address of record in a timely manner but that Mr. Jimenez delayed in collecting the mail from his post office box and further delayed taking steps to file an appeal from the decision until October 13, 2015.

The administrative law judge concludes that Mr. Jimenez's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law 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). Because the appeal was not timely filed pursuant to Iowa Code Section 96.6(2), the administrative law judge lacks jurisdiction to disturb the September 28, 2015, reference 01, decision that disqualified Mr. Jimenez for benefits and that relieved the employer of liability for benefits in connection with the September 9, 2015 separation. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The September 28, 2015, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on September 9, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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