

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUSTIN J GARRINGER
Claimant

APPEAL NO. 12A-UI-13965-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RMCF WILLIAMSBURG IOWA LLC
Employer

OC: 10/14/12
Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Protest
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the November 9, 2012, reference 02, decision that allowed benefits and that held the employer's protest was untimely. After due notice was issued, a hearing was held on December 21, 2012. Claimant did not respond to the hearing notice and did not participate. Isaac Collins represented the employer. Exhibits One, Two and Department Exhibit D-1 was received into evidence.

ISSUES:

Whether the appeal 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 November 9, 2012, Workforce Development mailed a copy of the November 9, 2012, reference 02, decision to the employer's last-known address of record. The employer received the decision on November 14 or 15, 2012. The decision contained a warning that any appeal must be postmarked or received by Appeals Section no later than November 19, 2012. The back of the appeal contained clear and concise instructions for filing an appeal. Isaac Collins, Owner, is the person who received the November 9, 2012 decision on November 14 or 15. Mr. Collins did not immediately review the correspondence when he received it, but instead set it aside for a couple days. On November 16 or 17, Mr. Collins spoke to a Workforce Development representative, who confirmed the need to file an appeal from the November 9 decision if the employer disagreed with that decision. On Monday, November 19, the day the appeal was due, Mr. Collins made an unsuccessful attempt to fax the appeal. On or about Friday, November 23, Mr. Collins made another unsuccessful attempt to fax an appeal. November 23 was the day after the Thanksgiving Holiday and Workforce Development offices were closed. On Monday, November 26, Mr. Collins made another unsuccessful attempt to fax his appeal. Mr. Collins then contacted the Appeals Section and was allowed to submit his appeal by email. The appeal was received on November 26, 2012. The appeal is dated November 26, 2012.

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 employer's appeal was filed on November 26, 2012, when the Appeals Section received it by email.

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 record indicates that the employer waited until the last moment, on the day the appeal was due, to attempt to file an appeal by fax. When that attempt was unsuccessful, the employer made no further attempt until Friday, November 23, when Workforce Development offices were closed. However, at that point the appeal was already days past due. Workforce Development did not cause the employer to wait until the last moment to attempt to fax the appeal. Indeed, the instructions for appeal were available to employer on the back of the November 9 decision and the employer had those instructions on November 14 or 15. A reasonable person would expect the employer to follow up with Workforce Development on November 19, or the next day at the latest, if the employer was experiencing problems with faxing the appeal. That did not happen. Workforce Development did not cause the employer's appeal to be late.

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 November 9, 2012, reference 02, 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/tll