

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L VIEYRA
Claimant

APPEAL NO. 11A-UI-01607-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 06/13/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Richard Vieyra filed an appeal from the December 30, 2010, reference 03, decision that denied benefits in connection with a November 20, 2010 separation. After due notice was issued, a hearing was held by telephone conference call on March 8, 2011. Mr. Vieyra participated. The employer did not respond to the hearing notice instructions to provide a telephone number 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 treat Mr. Vieyra's late appeal from the December 30, 2010, reference 03, decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 30, 2010, Iowa Workforce Development mailed a copy of the December 30, 2010, reference 03, decision to Richard Vieyra's last known address of record. Mr. Vieyra received the decision on or before Monday, January 3, 2011. The decision denied benefits in connection with Mr. Vieyra's November 20, 2010 separation from Labor Ready Midwest, Inc. The decision contained on its face a warning that an appeal must be postmarked or received by the Appeals Section by January 9, 2011. The decision also indicated on its face that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the appeal deadline would be extended to the next working day. January 9, 2011 was a Sunday and the next working day was Monday, January 10, 2011.

On January 3, 2011, Mr. Vieyra went to the Council Bluffs Workforce Force Development Center and spoke with a Workforce Development representative. The Workforce Development representative told Mr. Vieyra that he would need to file an appeal if he wished to challenge the decision that denied benefits. The Workforce Development representative provided Mr. Vieyra with an appeal form. Mr. Vieyra started to complete the appeal form at the Workforce Development Center, but decided to complete the form later. Mr. Vieyra wanted to obtain

phone records from Sprint that he thought would support his appeal. Mr. Vieyra did not submit a completed appeal form to the Workforce Development Center on January 3, 2011. Mr. Vieyra had overlooked the appeal deadline information on the decision he had received and the topic of the appeal deadline did not come up during his discussion with the Workforce Development representative on January 3, 2011. In any event, at that point, Mr. Vieyra still had a week, seven days, to file an appeal by the January 10, 2011 extended deadline.

Mr. Vieyra waited to file his appeal until after he received the phone records he wanted from Sprint. On February 10, 2011, exactly one month after the appeal deadline date, Mr. Vieyra delivered his completed appeal and attachments to the Council Bluffs Workforce Development Center. The staff at that Center immediately faxed Mr. Vieyra's appeal to the Appeals Bureau, which received the appeal by fax on February 10, 2011.

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 this case was filed on February 10, 2011, the day Mr. Vieyra delivered his completed appeal form to the Workforce Development Center and the day the Appeals Bureau received the appeal. The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed, six weeks, 42 days, elapsed between the mailing date of the decision and the date the appeal was filed on February 10, 2011.

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. Indeed, after the conversation with the Workforce Development representative on January 3, 2011, Mr. Vieyra still had another week, seven days, in which to file a timely appeal. The only reason Mr. Vieyra did not file a timely appeal was because he did not read the appeal deadline information set forth on the decision mailed to him on December 30, 2010 and received by him on or before January 3, 2011. Mr. Vieyra seeks to shift his burden of filing a timely appeal to the Workforce Development Center staff and faults them for not specifically telling him about the ten-day deadline for appealing. The evidence indicates that the Workforce Development staff was indeed helpful to Mr. Vieyra. The law imposes the burden of filing a timely appeal on the party desiring to appeal and does not allow for shifting of that burden to the Agency or Agency representatives. Nor did the law impose an obligation on the local Workforce Development staff to remind Mr. Vieyra of the appeal deadline clearly stated on the decision directed to Mr. Vieyra.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Workforce Development 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 specifics 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 December 30, 2010, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that denied benefits remains in effect.

At the claimant's request, the administrative law judge has directed the Appeals Staff to send the claimant a copy of the fact-finding materials from the December 29, 2010 fact-finding interview. The administrative law judge has also directed the Appeals Staff to send the claimant a new copy of the December 30, 2010, reference 03, decision in case the claimant unable to locate his copy.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw