

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NYIBOL DHOL
Claimant

APPEAL NO. 13A-UI-04374-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
TPI IOWA
Employer

OC: 04/11/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nyibol Dhol filed an appeal from the February 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 13, 2013. Ms. Dhol participated. Danielle Williams, Human Resources Coordinator, represented the employer. Arabic-English interpreter Magdy Salama assisted with the hearing. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat Ms. Dhol's late appeal as a timely appeal. Given the unreasonable delay in filing the appeal, there is not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nyibol Dhol is originally from Sudan. Her native language is Arabic. Ms. Dhol has lived and worked in the United States for several years and has substantial conversational English skills. Ms. Dhol cannot read English. Ms. Dhol is married and her husband has greater English skills. Ms. Dhol has a 12-year-old daughter, who has gone to school in the United States since first grade and is fluent in English. Ms. Dhol's daughter however is not fluent in Arabic. Ms. Dhol has a bilingual cousin, who lives in Ames.

On February 27, 2013, Iowa Workforce Development mailed to Ms. Dhol, at her last-known address of record, a copy of the February 27, 2013, reference 01, decision. The decision denied unemployment insurance benefits in connection with Ms. Dhol's January 31, 2013 discharge from TPI Iowa. Ms. Dhol received the decision on February 28 or March 1. The decision carried on its face a March 9, 2013 deadline for appeal. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 9, 2013 was a Saturday and the next working day was Monday, March 11, 2013.

When the February 27, reference 01, decision arrived at Ms. Dhol's address her daughter initially set it aside, but then brought it to Ms. Dhol's attention at the beginning of March. Ms. Dhol's daughter read the decision to Ms. Dhol. Ms. Dhol understood that the decision denied benefits. On February 26, a Workforce Development representative had telephoned Ms. Dhol in attempt to reach her for the February 26 fact-finding interview. The Workforce Development representative had been unable to reach Ms. Dhol, but had left a message for Ms. Dhol that included her appeal rights. Ms. Dhol listened to the message and understood that if she disagreed with the decision she received that she needed to file an appeal.

When Ms. Dhol received the February 27, reference 01 decision that she understood denied benefits, even though she knew she needed to file an appeal if she disagreed with the decision, she did not immediately take any steps to file an appeal. Ms. Dhol did not take any steps to file an appeal until on or about April 11, 2013. At that time, she spoke to her cousin in Ames about the matter. Ms. Dhol's cousin readily contacted Workforce Development about the matter. April 11, 2013, Ms. Dhol went to the Des Moines Workforce Development Center and, with the assistance of a Workforce Development representative, completed an appeal form. Ms. Dhol left her completed appeal form with the Workforce representative on April 11, 2013. The Appeals Section received the appeal form the next day, April 12, 2013.

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 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. Ms. Dhol received the decision on February 28 or March 1. Ms. Dhol understood at the beginning of March, that the decision denied benefits. Ms. Dhol understood in February, that if she disagreed with the decision, she had to file an appeal. Ms. Dhol did nothing towards filing an appeal for more than a month after she received it, more than a month after she understood it denied benefits, and more than a month after she was aware of the necessity to file an appeal. Once Ms. Dhol decided to take action on the matter, her bilingual cousin was available to assist her with the matter. Ms. Dhol had sufficient English skills to present herself at the Des Moines Workforce Development Center to ask for assistance with the appeal. That is what she ultimately did. Ms. Dhol had multiple family members available to assist her with timely filing of an appeal. Ms. Dhol unreasonably delayed taking steps to file an appeal until beyond what was actually an extended appeal deadline. Instead of the usual 10 days in which to file a timely appeal, Ms. Dhol had 12 days to file a timely appeal. Had Ms. Dhol taken reasonable steps to respond to the decision when she received it, she could have filed a timely appeal.

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 871 IAC 24.35(2)(c).

Even if the administrative law judge were to find good cause to treat a somewhat late appeal as a timely appeal in light of the language issue—and the administrative does not so find under the circumstances of this case—Ms. Dhol's delay for almost a month and a half between the time she received the decision and the filing of her appeal on April 11, 2013 was unreasonable.

Ms. Dhol'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 lower decision that denied benefits. 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 February 27, 2013, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that disqualified the claimant for benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs