

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELMORE R BLAKENEY
Claimant

APPEAL NO. 12A-UI-06446-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 01/29/12
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) - Discharge for Misconduct
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Delmore Blakeney filed an appeal from the May 10, 2012, reference 08, decision that denied benefits based on an agency conclusion that Mr. Blakeney had been discharged from Schenker Logistics, Inc. for excessive unexcused absenteeism. After due notice was issued, a hearing was held on June 25, 2012. Mr. Blakeney participated. Department Exhibits D-1, D-2, and D-3 were received into evidence.

ISSUE:

Whether Mr. Blakeney's appeal from the May 10, 2012, reference 08 decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 10, 2012, Iowa Workforce Development mailed a copy of the May 10, 2012, reference 08, decision to Delmore Blakeney's last-known address of record. The decision denied benefits based on an agency conclusion that Mr. Blakeney had been discharged from Schenker Logistics, Inc. for excessive unexcused absenteeism. Mr. Blakeney received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 20, 2012. The decision also indicated on its face that if the deadline fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. May 20, 2012 was a Sunday and the next working day was Monday, May 21, 2012.

On June 1, 2012, Mr. Blakeney went to the Iowa City Workforce Development Center and completed an appeal form. Mr. Blakeney left the completed appeal form with the Workforce Development Center staff, who faxed the appeal to the Appeals Section that same day. The Appeals Section received the appeal on June 1, 2012.

On April 17, 2012, a Workforce Development representative had entered a reference 06 decision that allowed benefits to Mr. Blakeney effective March 25, 2012, *as long as he met all other eligibility requirements*. The April 17 decision was based on an agency conclusion that

Mr. Blakeney was able and available for work. Schenker Logistics, Inc. had appealed from that decision, but had later withdrawn its appeal from that decision. An appeal hearing concerning the April 17, 2012, reference 06 decision about Mr. Blakeney's ability to work and availability for work had been set for May 21, 2012. *Prior to the appeal hearing*, the employer had withdrawn the decision and Administrative Law Judge Steve Wise had notified Mr. Blakeney that the appeal was withdrawn.

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).

Mr. Blakeney's appeal from the May 10, 2012, reference 08 decision was filed on June 1, 2012. This is the day on which Mr. Blakeney delivered his completed appeal form to the Iowa City Workforce Development Center staff and the day on which the Appeals Section received the appeal by fax.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the May 10, 2012, reference 08 decision and the date Mr. Blakeney filed his appeal from that decision.

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 from the May 10, 2012, reference 08 decision. The administrative law judge concludes that Mr. Blakeney's failure to file a timely appeal from the May 10, 2012, reference 08 decision 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). 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 May 10, 2012, reference 08, decision is affirmed. The claimant's appeal from that decision concerning his *separation* from Schenker Logistics, Inc. was not timely. The decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs

