IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DENNIS L CASTEEL
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO. 12A-UI-03377-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/05/12
Claimant: Appellant (1)

Section 96.5(2)(a) – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Dennis Casteel filed an appeal from the March 21, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 18, 2012. Mr. Casteel participated personally and was represented by Philip Miller, attorney at law. Ben Wise represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat Mr. Casteel'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 March 20, 2012, Dennis Casteel participated in a telephonic fact-finding interview, the purpose of which was to discuss his separation from employer Cargill Meat Solutions Corporation. Attorney Philip Miller represented Mr. Casteel at the fact-finding interview. The employer submitted documents in lieu of participating in the fact-finding interview.

On March 21, 2012, Iowa Workforce Development mailed a copy of the March 21, 2012, reference 01, decision to Mr. Casteel's last known address of record. Mr. Casteel's address of record on file with the agency is 2733 Key Blvd., Birmingham, IA 52535-8507. Workforce Development also mailed a copy of the decision to the employer at the employer's address of record with the agency. The employer's address of record on file with Workforce Development is c/o Barnett & Associates, P.O. Box 7340, Garden City, New York 11530-0725. Workforce Development did not mail a copy of the March 21, 2012, reference 01, decision to Mr. Casteel's attorney, Mr. Miller.

The decision mailed to Mr. Casteel and to the employer contained a warning that an appeal must be postmarked or received by the Appeals Section by March 31, 2012. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. March 31, 2012 was a Saturday. The next working day was Monday, April 2, 2012.

Mr. Casteel received his copy of the decision in a timely manner, on or before Friday, March 30, 2012. Mr. Casteel read a portion of the decision, but did not read the paragraph that provided the appeal deadline information. On the afternoon of April 3, 2012, Mr. Casteel faxed a copy of the decision to attorney Philip Miller. That same afternoon, Mr. Miller prepared a written appeal on Mr. Casteel's behalf. Mr. Miller's office faxed a copy of the appeal to the Appeals Section and the Appeals Section received the faxed appeal on April 3, 2012. Mr. Miller's office also mailed the appeal. The envelope in which the mailed appeal arrived bears an April 3, 2012 postmark.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in relevant part, as follows:

> 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.*

[Emphasis added.] The statute indicates that the agency's initial decision concerning the claimant's benefit eligibility or disqualification is to be sent to the claimant at the claimant's last known address. That is what happened in this case, when the agency mailed notice of the decision to the claimant at his home in Birmingham. The statute indicates that notice is to be sent to the other interested parties. The definition of who those interested parties are is contained in the second sentence of the statute. The interested parties in this context are those parties who were entitled to initial notice of the filing of the claim, that is, the affected employers. The statute does not support the claimant's assertion in the present matter that notice to the claimant concerning the entry of the adverse decision was somehow defective because the claimant's attorney did not receive a copy. Nor does Iowa Administrative Code rule 871 IAC 24.19(1) support such an argument:

871 IAC 24.19(1) provides:

> Determination and review of benefit rights.
>
> 24.19(1) Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. *Notice of such determination shall be promptly*

> *given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination.* Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last–known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

[Emphasis added.]

Aside from the language of the statute and the administrative rule, which do not support expansion of notice due to the claimant to require notice also to claimant's counsel in connection with an initial agency decision, there are additional factors that argue against finding such a requirement here. While the fact-finder's notes indicate that Mr. Miller participated in the fact-finding interview, there is no indication that Mr. Miller filed a formal appearance or submitted any documentation containing his firm's address prior to the filing of the appeal on April 3, 2012. There is no indication that Mr. Miller provided his mailing address or requested a copy of the decision. Given the agency's established practice of not sending the initial decision to parties other than the claimant and the employer in interest, and given Mr. Miller's prior involvement in unemployment insurance matters at the Claims level, there was no reason for Ms. Miller to expect to receive a copy of the decision. On the other hand, there was reason for Mr. Miller to expect his client would receive a copy of the initial decision and reason for Mr. Miller to expect his client to contact him in a timely manner to discuss whether appeal of the initial decision would be appropriate.

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).

Both forms of appeal at issue in this matter were filed on April 3, 2012.

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 claimant received the decision on or before March 30, 2012. The record indicates that the claimant had the benefit of two extra days to prepare and file an appeal because the ten-day deadline fell on a Saturday and was extended by operation of law to Monday, April 2, 2012. The claimant has provided no reasonable explanation of why he did not read the deadline information on the decision he received or why he delayed until April 3, 2012 to contact his attorney to discuss the matter.

The administrative law judge concludes that the appellant's 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 March 21, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw