

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID DUNHAM**  
Claimant

**APPEAL NO. 15A-UI-11134-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARROLL DISTRIBUTING CO**  
Employer

**OC: 08/09/15**  
**Claimant: Appellant (1)**

Iowa Code Section 96.3(5) – Business Closing  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

David Dunham filed an appeal from the August 31, 2015, reference 01, decision that denied his request for enhanced benefits, based on an Agency conclusion that his employment separation had not been due to a business closing. After due notice was issued, a hearing was held on October 19, 2015. Mr. Dunham participated. Jean Carroll represented the employer. Department Exhibits D-1 and D-2 were received into evidence. The employer waived formal seven-day notice of the hearing.

**ISSUE:**

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 August 31, 2015, Iowa Workforce Development mailed a copy of the August 31, 2015, reference 01, decision to David Dunham at his last-known address of record. That decision denied enhanced benefits beyond the usual 26-week cut-off, based on an Agency conclusion that Mr. Dunham's employment separation had not been due to a business closing. Mr. Dunham's address of record is a Post Office box in Donahue, Iowa. The Post Office is located two blocks from Mr. Dunham's home. Mr. Dunham checks his Post Office box infrequently. The August 31, 2015, reference 01, decision arrived at Mr. Dunham's Post Office box in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal from the decision must be postmarked by September 10, 2015 or received by the Appeals Section by that date. On September 4, 2015, Mr. Dunham went out of town. As of that date, it had been a week or two since Mr. Dunham had checked his Post Office box. The weight of the evidence indicates that the August 31, 2015, reference 01, decision had landed in the Post Office box before Mr. Dunham left town on September 4, 2015. Mr. Dunham arrived back into Donahue on Monday, September 7, 2015, Labor Day. Mr. Dunham waited until on or about September 20, 2015 to collect his mail from his Post Office box. The August 31, 2015, reference 01, decision was part of the mail that had been accumulating in the Post Office box. Mr. Dunham waited until October 6, 2015 to take steps toward filing an appeal from the

decision. While Mr. Dunham does not recall filing an appeal, the Appeals Bureau received an electronic appeal from Mr. Dunham on October 6, 2015.

#### **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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Dunham's appeal from the August 31, 2015, reference 01, decision was filed on October 6, 2015, when the Appeal Bureau received the electronic appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the August 31, 2015, reference 01, decision and the filing of Mr. Dunham's appeal on October 6, 2015. 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 Mr. Dunham did have a reasonable opportunity to file a timely appeal. Mr. Dunham's failure to check his Post Office box for a week or two prior to leaving September 4, 2015 was unreasonable. The weight of the evidence indicates that the August 31, 2015 decision was waiting for him at that time. Mr. Dunham's failure to check his Post Office again until on or about September 20, 2015 was unreasonable. Mr. Dunham's further delay to October 6, 2015 to take steps to file an appeal from the August 31, 2015, reference 01, decision was unreasonable. 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).

The administrative law judge concludes that Mr. Dunham'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 untimely, the administrative law judge lacks jurisdiction to disturb the August 31, 2015, reference 01, decision, even if that decision was erroneous. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The August 31, 2015, reference 01, decision is affirmed. The appeal in this case was not timely.

Because the appeal was untimely, the decision that denied enhanced benefits, based on an Agency conclusion that the employment separation was not based on business closing, must remain in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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