

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**REBECCA S REED  
803 HILLS POINT APT 103  
PO BOX 412  
MARQUETTE IA 52158-0412**

**I O C SERVICES LLC  
1641 POPPS FERRY RD B 1  
BILOXI MS 39532-2226**

**Appeal Number: 04A-UI-10024-RT  
OC: 08/15/04 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Rebecca S. Reed, filed an appeal from an unemployment insurance decision dated September 1, 2004, reference 03, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on October 7, 2004, with the claimant participating. Angie Gerndt, Human Resources Manager, participated in the hearing for the employer, IOC Services, LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit One was admitted into evidence. The claimant spoke to the administrative law judge at 5:52 p.m. on September 21, 2004 and asked the hearing be rescheduled because she was in class. The administrative law judge indicated that he would consider rescheduling the hearing, but needed to know when the claimant would be available. The claimant could not tell him so the claimant decided to leave the hearing as it had been scheduled. The claimant participated in the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on September 1, 2004, reference 03, determining that the claimant was not eligible to receive unemployment insurance benefits because she voluntarily quit work on August 18, 2004 to go back to school and her quitting was not caused by her employer. This decision was sent to the claimant on that date and received by the claimant. The claimant does not remember when she received the decision but did receive it. That decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by September 13, 2004 (the decision actually said September 11, 2004, but since that was a Saturday, the appeal would be due the next business or working day). However, the claimant's appeal was mailed in an envelope bearing a postmark of September 14, 2004, making it one day late. The claimant's appeal was also dated September 14, 2004. The claimant had no real explanation as to why the appeal was late. The claimant testified that she called Iowa Workforce Development local office on Monday, September 13, 2004 and learned that it was closed. However, the claimant had no explanation as to why she didn't call Workforce Development sooner or why she didn't just go ahead and file the appeal even without contacting Workforce Development.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The claimant's appeal is not timely and she has not demonstrated good cause for a delay in the filing of her appeal and, as a consequence, the claimant's appeal is not accepted and the administrative law judge has no jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach that issue.

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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for a delay in the filing of her appeal. The administrative law judge concludes that the claimant has not met her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for a delay in the filing of her appeal. On its face, the claimant's appeal is one day late as noted in the Findings of Fact. The claimant seemed to admit that she had received the decision and she must have received the decision because she seeks to appeal it. The claimant did not recall when she had received the decision, but it was sent to the same address as shown on the return address on the claimant's envelope bearing her appeal. The claimant testified that she called Iowa Workforce Development on Monday, September 13, 2004 and learned that it was closed and was only open from Tuesday through Friday. Apparently, then the claimant waited until the next day to file her appeal. However, the claimant had no

explanation as to why she waited until September 13, to contact Iowa Workforce Development nor did she have any explanation as to why she just didn't go ahead and file an appeal as instructed in the decision. Under these circumstances, the administrative law judge is constrained to conclude that the claimant has not demonstrated good cause for a delay in the filing of her appeal. There is no evidence that her delay in filing her appeal was caused either by Iowa Workforce Development or the United States Postal Service. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of a decision dated September 1, 2004, reference 03, is not timely and the claimant has not demonstrated good cause for a delay in the filing of her appeal. Therefore, the administrative law judge concludes that the appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issues presented. The administrative law judge finally concludes that the representative's decision of September 1, 2004, reference 03, should remain in full force and effect.

DECISION:

The representative's decision dated September 1, 2004, reference 03, is to remain in full force and effect. The claimant, Rebecca S. Reed, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

kjf/b