

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL E SWANCUT
Claimant

APPEAL NO. 16A-UI-02650-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT CONNECTIONS INC
Employer

OC: 07/12/15
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment Agency
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the February 19, 2016, reference 11, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's January 15, 2016 separation from the temporary employment agency was for good cause attributable to the employer. After due notice was issued, a hearing was held on March 15, 2016. Claimant Paul Swancutt participated. Tammy Christensen represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the employer's appeal was timely. Whether there is good cause to treat the employer'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 February 19, 2016, Iowa Workforce Development mailed a copy of the February 19, 2016, reference 11, decision to the employer at the employer's last-known address of record. The employer's address of record is a post office box in Spencer. The decision allowed benefits to the claimant provided he was otherwise eligible and held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant's January 15, 2016 separation from the temporary employment agency was for good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by February 29, 2016 or received by the Appeals Section by that date. The employer received the decision in a timely manner, prior to the deadline for appeal. On February 26, 2016, Tammy Christensen, Corporate Accountant, date-stamped the decision as being received on February 26, 2016. Ms. Christensen reviewed the decision on that date, but did not note the February 29, 2016 appeal deadline. On March 1, 2016, Ms. Christenson drafted the employer's appeal. On March 2, 2016, Ms. Christenson faxed the employer's appeal to the Appeals Bureau. The Appeals Bureau received the faxed appeal on March 2, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 employer's appeal was filed on March 2, 2016, when the Appeals Bureau received the faxed appeal.

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 weight of the evidence in the record establishes that the decision that was mailed to the employer from Des Moines on February 19, 2016, most likely landed in the employer's post office box before February 26, 2016, the date that Ms. Christensen date-stamped the document. At the time Ms. Christensen date-stamped and reviewed the decision, the employer still had reasonable opportunity to file an appeal by the February 29, 2016 appeal deadline.

The employer's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to the employer's actions and not due to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the employer has failed to preserve its right to appeal the reference 11 decision and the administrative law judge lacks jurisdiction to disturb the reference 11 decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The employer's appeal was untimely. The February 19, 2016, reference 11, decision is affirmed. The decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the January 15, 2016 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs