

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C BLANK
Claimant

APPEAL NO. 15A-UI-05116-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABILD GREG
Employer

OC: 02/22/15
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Thomas Blank filed a late appeal from the March 10, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Blank had voluntarily quit on January 24, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 15, 2015. Mr. Blank participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUES:

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 March 10, 2015, Iowa Workforce Development mailed a copy of the March 10, 2015, reference 01, decision to Thomas Blank's last-known address of record: 104 East 2nd Street, Villisca, IA 50864. That address is where a relative of Mr. Blank resides. The decision was received at the address of record in a timely manner, prior to the deadline for appeal. Mr. Blank did not check on his mail on a regular basis and did not make arrangements to have his mail forwarded elsewhere. The March 10, 2015, reference 01, decision disqualified Mr. Blank for benefits and relieved employer Greg Abild of liability for benefits, based on an Agency conclusion that Mr. Blank had voluntarily quit on January 24, 2015 without good cause attributable to the employer. The March 10, 2015, reference 01, decision contained a warning that an appeal from the decision must be postmarked by March 20, 2015 or received by the Appeals Section by that date. On April 29, 2015, Mr. Blank drafted an appeal and had a friend fax the appeal to the Appeals Section. The Appeals Section received the appeal by fax on April 29, 2015.

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).

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).

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. Blank's appeal was filed on April 29, 2015, at the time the Appeals Section received the appeal by fax.

Substantially more than ten calendar days elapsed between the mailing date of the decision and the date that Mr. Blank filed his appeal. 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 weight of the evidence in the record shows that Mr. Blank did have a reasonable opportunity to file a timely appeal. Mr. Blank is at times an unreliable witness. Mr. Blank concedes that he has problems remembering dates and attributes this to a head injury. Mr. Blank provided internally contradictory testimony. The weight of the evidence establishes that the March 10, 2015, reference 01, decision arrived in a timely manner at the address of record designated by Mr. Blank and that any delay in filing the appeal was attributable to Mr. Blank not taking reasonable, appropriate, and timely steps to follow up on the matter. The delay in filing the appeal was not attributable to Workforce Development or the United States Postal Service. The delay in filing the appeal was unreasonable. Because the delay in filing the appeal was not attributable to Workforce Development or to the Postal Service, the evidence fails to establish good cause 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 administrative law judge lacks jurisdiction to disturb the decision from which Mr. Blank appealed. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The March 10, 2015, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the January 24, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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