

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DETHLEF F NEVE
Claimant

APPEAL NO. 18R-UI-06812-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAILCREW XPRESS LLC
Employer

OC: 10/29/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Dethlef Neve filed an appeal from the April 12, 2018, reference 07, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Neve voluntarily quit on March 16, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 10, 2018. Mr. Neve participated. Tara Johnson represented the employer and presented additional testimony through Daniel Doubler. The hearing in this matter was consolidated with the hearing in Appeal Number 18R-UI-06813-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A and Department Exhibits D-1 and D-2 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 April 12, 2018, Iowa Workforce Development mailed a copy of the April 12, 2018, reference 07, decision to Dethlef Neve at his address of record in Clear Lake. The decision disqualified Mr. Neve for benefits and relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Neve voluntarily quit on March 16, 2018 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked no later than April 22, 2018 or be received by the Appeals Bureau by that date. The decision also stated that if the deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. April 22, 2018 was a Sunday. The next working day was Monday, April 23, 2018. Though Mr. Neve's address of record on file with Iowa Workforce Development from the time he established the original claim that was effective October 29, 2017 has been a street address and apartment number in Clear Lake, in November 2017 Mr. Neve commenced using a United States Post Office box in Clear Lake to receive his mail. Mr. Neve had not updated his address of record with Iowa Workforce Development prior to the July 10, 2018 appeal hearing. The United States Postal Service

forwarded the April 12, 2018, reference 07, disqualification decision to Mr. Neve's post office box. The weight of the evidence establishes that Mr. Neve received the April 12, 2018, reference 07, decision in a timely manner, prior to the extended April 23, 2018 deadline for appeal.

On April 18, 2018, Iowa Workforce Development mailed a copy of a reference 08 overpayment decision to Mr. Neve's address of record. The overpayment decision contained an April 28, 2018 appeal deadline. That date was a Saturday. The overpayment decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. The next working day was Monday, April 30, 2018. On April 29, 2018, Mr. Neve's daughter filed an on-line appeal from the April 18, 2018, reference 08, overpayment decision on behalf of Mr. Neve. In the online appeal, Mr. Neve's daughter asserted that Mr. Neve had just received the overpayment decision on April 29, 2018. The Appeals Bureau treated the appeal from the overpayment decision as also an appeal from the earlier disqualification decision. The Appeals Bureau received the appeal on April 29, 2018.

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 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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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 weight of the evidence in the record establishes that Mr. Neve had a reasonable opportunity to file an appeal from the April 12, 2018, reference 07, disqualification decision by the applicable April 22, 2018 appeal deadline. Mr. Neve does not recall when he received the decision. The law presumes the normal operation of the Iowa Workforce Development and Mr. Neve has failed to present sufficient evidence to rebut that presumption. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). In other words, there is no reason to conclude that the April 12, 2018, reference 07, decision was mailed to Mr. Neve on a date other than April 12, 2018. The evidence in the record establishes no basis to conclude that the United States Postal Service's delivery of the April 12, 2018, reference 07, disqualification decision to Mr. Neve's post office box was delayed in any manner.

The weight of the evidence in the record establishes that Mr. Neve's appeal, as it relates to the April 12, 2018, reference 07, disqualification decision was untimely. The extended appeal deadline applicable to that decision was Monday, April 23, 2018. The appeal was filed on April 29, 2018, when Mr. Neve filed an appeal in response to the April 18, 2018, reference 08, overpayment decision. The weight of the evidence establishes that the late filing of the appeal from the April 12, 2018, reference 07, disqualification decision was attributable to Mr. Neve, not Iowa Workforce Development or the United States Postal Services. Accordingly, there is no good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(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 April 12, 2018, reference 07, decision that disqualified Mr. Neve for unemployment insurance benefits in connection with his March 16, 2018 separation from Railcrew Xpress. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The April 12, 2018, reference 07, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant voluntarily quit on March 16, 2018 without good cause attributable to the employer, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs