

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE J REED
Claimant

APPEAL NO. 12A-UI-10492-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/08/12
Claimant: Appellant (1)

Iowa Code Section 96.5(2) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Danielle Reed filed an appeal from an overpayment decision that was also treated by the Appeals Section as an appeal from the August 15, 2012, reference 02, decision that disqualified Ms. Reed for benefits in connection with a July 9, 2012 separation from Care Initiatives. Ms. Reed requested an in-person hearing. After due notice was issued, an in-person hearing was held in Creston on November 15, 2012. Ms. Reed participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-10493-JT. Department Exhibits D-1 through D-5 were received into evidence.

The employer did not appear or participate in the hearing. Earlier in the day on November 15, 2012, TALX representative David Williams participated in an unrelated Creston in-person hearing with the administrative law judge. At that time of that earlier, unrelated hearing, Mr. Williams told the administrative law judge that he had no witnesses to testify at the hearing concerning Ms. Reed and that the employer would not be participating in the hearing concerning Ms. Reed.

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 15, 2012, Workforce Development mailed a copy of the August 15, 2012, reference 02, decision to Danielle's Reed's last-known address of record. The decision disqualified Ms. Reed for unemployment insurance benefits in connection with a July 9, 2012 discharge from Care Initiatives. The decision contained an August 25, 2012 deadline for appeal. Ms. Reed received the decision within a couple days of the mailing date, prior to the deadline for appeal. Ms. Reed reviewed the decision that denied benefits, but elected not to take any action in response to it. Ms. Reed subsequently received the August 22, 2012, reference 03, decision that said she was overpaid \$1,136.00 in benefits as a result of the earlier decision that disqualified her for benefits. The overpayment decision contained a September 1, 2012 deadline for appeal. The

overpayment decision got Ms. Reed's attention and Ms. Reed faxed an appeal of the overpayment decision to the Appeals Section on August 30, 2012. The Appeals Section received the appeal on August 30, 2012 and treated it as an appeal also from the earlier decision that had disqualified Ms. Reed for benefits.

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, 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 appeal in this matter was filed on August 30, 2012, when the Appeals Section received the faxed appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the August 15, 2012 mailing date of the reference 02 disqualification decision and the date that Ms. Reed filed her 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that 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). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2). The August 15, 2012, reference 02, decision has become a final agency decision and, accordingly, the administrative law judge lacks jurisdiction to disturb that decision or rule on the merits of Ms. Reed's appeal from that 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 Agency representative's August 15, 2012, reference 02, disqualification decision is affirmed. The appeal from that decision was not timely, and the decision of the representative that disqualified the claimant for benefits in connection with the July 9, 2012 discharge remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css