

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SCOTT L NEFF
Claimant

APPEAL NO. 19A-UI-02771-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/08/18
Claimant: Appellant (1)

Iowa Code section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(6)(a) – Department Approved Training

STATEMENT OF THE CASE:

Scott Neff filed an appeal from the March 20, 2019, reference 02, decision that denied Mr. Neff's request for training extension benefits for the period beginning March 17, 2019, based on the deputy's conclusion that Mr. Neff did not meet one or more of the eligibility requirements. After due notice was issued, a hearing was held on April 19, 2019. Mr. Neff participated. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-02770-JTT. Exhibit A and Department Exhibits D-2 and D-3 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 20, 2019, Iowa Workforce Development mailed two decisions to claimant Scott Neff's address of record in Altoona. The March 20, 2019, reference 01, decision denied Mr. Neff's request for department approved training for the period beginning March 17, 2019, based on the deputy's conclusion that Mr. Neff did not meet one or more of the eligibility requirements. The March 20, 2019, reference 02, decision denied Mr. Neff's request for training extension benefits for the period beginning March 17, 2019, based on the deputy's conclusion that Mr. Neff did not meet one or more of the eligibility requirements. Each decision stated that an appeal from the decision must be postmarked or be received by the Appeal Section by March 30, 2019. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 30, 2019 was a Saturday. The next working day was Monday, April 1, 2019. Each decision contained clear and concise instructions for filing an appeal online, by fax any by mail.

The two decisions arrived at Mr. Neff's Altoona address of record in a timely manner, most likely within a day or two of the March 20, 2019 mailing date. Neither Mr. Neff nor his wife was checking their mailbox on a regular basis. Mr. Neff was residing at his home Altoona part of the time and at his parents' home 15 miles away in Runnels, Iowa part of the time. Mr. Neff was intermittently residing with his mother in preparation for moving her to an assisted living facility. Mr. Neff's wife continued to reside at the couple's home in Altoona at all relevant times. On March 30, 2019, Mr. Neff collected the two decisions from his mailbox. On Monday, April 1, 2019, Mr. Neff called the Iowa Workforce Development customer service line to ask why his requests for department approved training status and training extension benefits had been denied. Mr. Neff did not tell the customer service representative that he had received decisions with an impending appeal deadline. The customer service representative advised Mr. Neff that Mr. Neff would need to file an appeal from the decisions if he disagreed with them. Mr. Neff elected to wait to the next day to take action on the matters. On the afternoon of April 2, 2019, Mr. Neff submitted an online appeal. The Appeals Bureau received the online appeal on April 2 2019.

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).

Mr. Neff's appeal was filed on April 2, 2019, when the Appeals Bureau received the online appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the decision 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 Mr. Neff did have a reasonable opportunity to file a timely appeal from the March 20, 2019, reference 02, decision that denied training extension benefits. The decision arrived at Mr. Neff's home mail box in a timely manner on or about March 21 or 22, 2019. At that point, Mr. Neff had at least 10 days in which to file an appeal by the extended April 1, 2019 deadline. Mr. Neff unreasonably neglected checking his mailbox for time-sensitive correspondence. Mr. Neff's decision to stay at his home part-time and at his mother's home part-time did not prevent Mr. Neff from checking his mailbox on a regular basis or from having his wife check the mailbox. Mr. Neff elected to defer taking steps to file an appeal until after the April 1, 2019 extended appeal deadline has passed. Contrary to Mr. Neff's erroneous belief that the Iowa Workforce Development website shuts down at 5:00 p.m. daily, that website and the online appeal process is available 24 hours a day, seven days a week.

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 Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the March 20, 2019, reference 02, decision that denied training extension benefits. 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 20, 2019, reference 02, decision is affirmed. The claimant's appeal was untimely. The decision that denied the claimant's request for training extension benefits for the period beginning March 17, 2019, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs