

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENIS O ALIC
Claimant

APPEAL NO. 14A-UI-02591-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS INC
Employer

OC: 01/19/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Denis Alic filed an appeal from the February 7, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 26, 2014. Mr. Alic participated and presented additional testimony through Kayla Gray. The employer did not appear for the hearing. Exhibits A, B and C and Department Exhibits D-1 and D-2 were received into evidence.

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: Denis Alic established a new original claim for benefits that was effective January 19, 2014. On February 6, 2014, Mr. Alic participated in a telephonic fact-finding interview to discuss his separation from employer Captive Plastics, Inc. The Workforce Development Claims Deputy told Mr. Alic that the agency would mail a decision to Mr. Alic's home. Mr. Alic told the Workforce Development Deputy at the time of the interview that he was at his aunt's home. Mr. Alic did not specify that his aunt's home was in Hawaii. Mr. Alic's address of record is an apartment in Clive that Mr. Alic shares with his mother and with his girlfriend, Kayla Gray. On January 22, 2014, Mr. Alic had traveled to Hawaii to visit his aunt. Ms. Gray stayed behind. Ms. Gray or Mr. Alic's mother would collect Mr. Alic's mail each day. Each day Mr. Alic remained in Hawaii, Ms. Gray and Mr. Alic would speak by telephone and Ms. Gray would give Mr. Alic a report concerning the mail he had received. Ms. Gray was not authorized to open Mr. Alic's mail and did not open the mail.

On February 7, 2014, Iowa Workforce Development mailed a copy of the February 7, 2014, reference 01, decision to Mr. Alic's address of record in Clive. The decision disqualified Mr. Alic for unemployment insurance benefits based on an agency conclusion that he had been discharged for misconduct from Captive Plastics, Inc., on October 12, 2013. The decision contained a warning that an appeal from the decision must be postmarked by February 17,

2014 or received at the Appeals Section by that date. The decision was received at Mr. Alic's address of record in Clive in a timely manner, prior to the deadline for appeal. The decision was received at that address on or about February 8, 2014. When the correspondence was received at the address of record, Ms. Gray reported to Mr. Alic at the time of their daily call that correspondence from Workforce Development had been received. Mr. Alic directed Ms. Gray to place the correspondence in their "memory box" so that Mr. Alic could deal with the correspondence later.

Mr. Alic returned from Hawaii on March 6, 2014. On that day, Mr. Alic opened the correspondence from Workforce Development, saw that the correspondence disqualified him for benefits, and saw that the deadline for appeal has passed. On March 7, 2014, Mr. Alic went to the Workforce Development office at 150 Des Moines Street to inquire about filing an appeal and was directed to the Des Moines Workforce Development at 430 East Grand Avenue. On that day, Mr. Alic completed an appeal form and delivered the form to the staff at 430 East Grand. The Appeals Section received the appeal on March 7, 2014 by fax.

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).

Mr. Alic's appeal was filed on March 7, 2014, the date that he delivered the appeal to the Workforce Development Center and the date the Appeals Section received the appeal by fax.

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 record indicates that Mr. Alic knew that an unemployment insurance decision would be mailed to his home in Clive in the days following the February 6, 2014 fact-finding interview. The weight of the evidence indicates that Mr. Alic's girlfriend, Ms. Gray, immediately notified Mr. Alic that correspondence from Workforce Development had been received. Mr. Alic elected not to have Ms. Gray or his mother open the correspondence to see what it was. Mr. Alic elected to let the correspondence sit until March 6, 2014, when he returned from his vacation in Hawaii.

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). Instead, the delay in filing the decision was attributable to Mr. Alic's decision to delay taking action on the correspondence that he knew had been received at his home while he was in Hawaii. The appeal was not timely filed pursuant to Iowa Code section 96.6(2). The evidence fails to provide good cause, as defined by the law, to treat the late appeal as a timely appeal. Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the lower decision that disqualified Mr. Alic for 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 Claims Deputy's February 7, 2014, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision that disqualified the claimant for benefits and relieved the employer of liability for benefits remains in effect.

In the event the decision regarding timeliness is subsequently reversed, there is sufficient evidence in the record upon which to base a decision regarding the separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css