

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBERT L CANNON**  
Claimant

**APPEAL NO. 19A-UI-01892-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 07/22/18**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38)(b) – Partial Unemployment  
Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Robert Cannon filed an appeal from the February 12, 2019, reference 07, decision that denied benefits effective January 13, 2019, based on the deputy's conclusion that Mr. Cannon was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on March 19, 2019. Mr. Cannon participated. Megan Meyerman represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-01893-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence on the timeliness of appeal issue.

**ISSUE:**

Whether Mr. Cannon's appeal from the February 12, 2019, reference 07, decision was a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Cannon established an original claim for benefits that was effective July 22, 2018 and an additional claim for benefits that was effective January 13, 2019. On February 8, 2019, Mr. Cannon participated in a fact-finding interview that addressed whether he was able and available for work and whether he was partially unemployed from Wal-Mart. The fact-finding interview addressed the period beginning January 13, 2019. During the fact-finding interview, the Benefits Bureau deputy told Mr. Cannon to expect a decision in the mail in the coming days and that Mr. Cannon would have 10 days from the mailing date of the decision to file an appeal.

On February 12, 2019, Iowa Workforce Development mailed a copy of the February 12, 2019, reference 07, to Mr. Cannon's address of record. The decision denied benefits effective January 13, 2019, based on the deputy's conclusion that Mr. Cannon was not partially unemployed within the meaning of the law. The decision stated that an appeal from the

decision must be postmarked by February 22, 2019 or be received by the Appeals Section by that date. The decision contained clear concise instructions for filing an appeal, a customer service number, and a telephone number for the Appeals Bureau. Mr. Cannon received the February 12, 2019, reference 07, decision in a timely manner, prior to the appeal deadline. Mr. Cannon did not take steps to file an appeal from the February 12, 2019, reference 07, decision by the February 22, 2019 appeal deadline.

On February 25, 2019, Iowa Workforce Development mailed a February 25, 2019, reference 08, overpayment to Mr. Cannon's address of record. The decision stated that Mr. Cannon had been overpaid \$350.00 in unemployment insurance benefits for two weeks between January 13, 2019 and February 2, 2019, based on the February 12, 2019 decision that had disqualified Mr. Cannon for benefits. The February 25, 2019, reference 08, overpayment decision included a March 7, 2019 appeal deadline.

On March 4, 2019, Mr. Cannon went to the Sioux City IowaWORKS Center and used one of the Agency's computers to file an online appeal from the overpayment decision. The Appeals Bureau received the appeal the same day and treated it as an appeal from both the overpayment decision and from the earlier disqualification decision.

## **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. Cannon's appeal from the February 12, 2019, reference 07, decision and from the February 25, 2019, reference 08, overpayment decision was filed on March 4, 2019, when the Appeals Bureau received the electronically transmitted appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the February 12, 2019, mailing date of the February 12, 2019, reference 07, decision and the March 4, 2019 filing of the 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 evidence in the record establishes an untimely appeal from the February 12, 2019, reference 07, decision. Mr. Cannon had a reasonable opportunity to file a timely appeal from the February 12, 2019, reference 07, decision, but elected not to file an appeal until after he received a later overpayment decision. Mr. Cannon's appeal, as it relates to the February 12, 2019, reference 07, decision was filed 10 days after the applicable February 22, 2019 appeal deadline. Mr. Cannon's failure to file an appeal from the February 12, 2019, reference 07, decision by the February 22, 2019 was not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. Because the appeal from the February 12, 2019, reference 07, decision was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the February 12, 2019, reference 07, 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 February 12, 2019, reference 07, is affirmed. Claimant's appeal from the decision was untimely. The appeal in this case was not timely, and the decision of the representative remains in effect. The decision that denied benefits effective January 13, 2019, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs