

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN C LAWLER
Claimant

APPEAL NO. 07A-UI-07969-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONE STAR WELDING SERVICES LLC
Employer

OC: 06/24/07 R: 01
Claimant: Appellant (1)

Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

John Lawler filed an appeal from the July 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 4, 2007. Mr. Lawler participated. Lora Bevers, Secretary, represented the employer. The administrative law judge received Department Exhibits D-1 and D-2 into evidence.

ISSUES:

Whether the claimant's appeal was timely.

Whether there is good cause to deem the appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The July 18, 2007, reference 01, decision was mailed to John Lawler's last-known address of record on July 18, 2007. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 28, 2007. The reference 01 was received at the Wall Lake post office and erroneously placed in Mr. Lawler's father's post office box. Mr. Lawler's grandfather delivered the reference 01 decision to Mr. Lawler prior to the deadline for appeal. On August 14, Mr. Lawler mailed his appeal. The envelope in which the appeal arrived bears an August 14, 2007 postmark from Wall Lake, Iowa.

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 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).

Mr. Lawler is an unreliable historian concerning his receipt of the July 18, 2007, reference 01, decision and the steps he took to appeal that decision. Mr. Lawler testified he received the decision two weeks after the presumptive mailing date, which would place his receipt of the document after the deadline for appeal. However, Mr. Lawler testified that his grandfather

provided him with the decision prior to the deadline for appeal. Obviously, both cannot be correct. There were additional indications that Mr. Lawler's testimony was not reliable. These included Mr. Lawler's inability to provide even approximate dates for events significant to the filing of the appeal. The greater weight of the evidence indicates that the reference 01 was initially misdirected to Mr. Lawler's father, but that Mr. Lawler's family forwarded the document to Mr. Lawler in a timely fashion, prior to the deadline for appeal. The greater weight of the evidence indicates that Mr. Lawler had the decision prior to the appeal deadline, but failed to file a timely appeal. The evidence indicates that, in any event, Mr. Lawler delayed an unreasonably time, until August 14, 2007, to file his appeal. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

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 Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge concludes the claimant unreasonably delayed in filing the appeal. See 871 IAC 24.35(2)(c). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. 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 July 18, 2007, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css