

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL W ESSEX
Claimant

APPEAL NO. 15A-UI-00273-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVENPORT FARM & FLEET INC
Employer

**OC: 11/02/14
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:

Russell Essex filed a late appeal from the December 17, 2014, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that he had been discharged on October 21, 2014 for misconduct in connection with the employment. After due notice was issued, a hearing was held on February 2, 2015. Mr. Essex participated. Marilyn Lovejoy represented the employer. Exhibit A was 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 December 17, 2014 Iowa Workforce Development mailed a copy of the December 17, 2014, reference 01, decision to claimant Russell Essex at his last-known address or record. The decision disqualified Mr. Essex for benefits and relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Essex had been discharged on October 21, 2014 for misconduct in connection with the employment. The decision contained a warning that an appeal from the decision must be postmarked by December 27, 2014 or received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 27, 2014 was a Saturday and the next working day was Monday, December 29, 2014. Mr. Essex received the decision on or about December 19 or 20, 2014. On January 9, 2015 Mr. Essex went to the Davenport Workforce Development Center with his copy of the December 17, 2014 decision. Mr. Essex completed an appeal form and delivered to the Center staff the completed appeal form and the decision from which he was appealing. The Center staff immediately faxed the appeal to the Appeals Section and the Appeals Section received the faxed appeal that same day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. Essex's appeal was filed on January 9, 2015; the day Mr. Essex delivered the completed appeal to the Davenport Workforce Development Center staff and the day 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. When Mr. Essex received the decision, on or about December 19 or 20, 2014, he still had nine or ten days in which to file a timely appeal by the extended deadline. Mr. Essex did not do that. Instead, Mr. Essex waited until 11 days after the extended appeal deadline had passed to take any steps toward filing an appeal. Mr. Essex's 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). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Mr. Essex had failed to preserve his right to challenge the decision and the administrative law judge lacks jurisdiction to disturb the lower decision that disqualified Mr. Essex 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 December 17, 2014, reference 01, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the October 21, 2014 discharge, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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