

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LASHAWN R ANDERSON
Claimant

APPEAL NO. 15A-UI-05422-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

LaShawn Anderson filed a late appeal from the April 23, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that he had voluntarily quit on April 8, 2015 without good cause attributable to the employer by becoming incarcerated. After due notice was issued, a hearing was held on June 15, 2015. Mr. Anderson participated. Sandra Linsin represented the employer. Vanessa Keltner was available to testify. 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: On April 23, 2015, Iowa Workforce Development mailed a copy of the April 23, 2015, reference 01, decision to claimant LaShawn Anderson's last-known address of record. The decision disqualified Mr. Anderson for benefits, based on an Agency conclusion that he had voluntarily quit on April 8, 2015 without good cause attributable to the employer by becoming incarcerated. Mr. Anderson received the decision in a timely manner on or about April 27, 2015. The decision contained a warning that an appeal from the decision must be postmarked by May 3, 2015 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 appeal deadline would be extended to the next working day. May 3, 2015 was a Sunday and the next working day was Monday, May 4, 2015.

On April 29, 2015, Workforce Development mailed another, reference 02, decision to Mr. Anderson. The reference 02 decision addressed Mr. Anderson's separation from a different employer and allowed benefits to Mr. Anderson provided he met all other eligibility requirements. Mr. Anderson initially misunderstood the reference 02 decision to be a definitive determination of his eligibility for benefits and, based on that erroneous conclusion, did not take

steps to file an appeal from the April 23, 2015, reference 01, decision by the extended May 4, 2015 deadline. Both decisions had included a telephone number that Mr. Anderson could call if he had any questions about the meaning of the decision.

On May 7, 2015, Mr. Anderson drafted an appeal from the reference 01 decision and had the appeal faxed to the Appeals Section. The Appeals Section received the decision by fax that same day.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Anderson's appeal from April 23, 2015, reference 01, decision was filed on May 7, 2015, when the Appeals Section received the faxed appeal.

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 from the April 23, 2015, reference 01, decision that denied benefits based on the separation from Career Systems Development. Mr. Anderson received the decision on or about April 27, 2015 and would at that time have had another week in which to file a timely appeal. Mr. Anderson waited until May 7, two days after the appeal deadline to file his appeal. The administrative law judge concludes Mr. Anderson's late filing of the appeal 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). The fact that Workforce Development mailed two decisions to Mr. Anderson and that one of the decision provided a conditional award of benefits did not constitute good cause for not filing an appeal from the decision that denied benefits. The decision that had allowed benefits indicated that benefits were only allowed "provided you are otherwise eligible." That language put Mr. Anderson on notice that there were other factors to be considered, including other decisions entered by the Agency.

Because Mr. Anderson's appeal from the April 23, 2015, reference 01, decision was not timely filed pursuant to Iowa Code section 96.6(2), Mr. Anderson did not preserve his right to challenge the decision and the administrative law judge has no jurisdiction to disturb the 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 April 23, 2015, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the April 8, 2015 separation remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css