

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L BARTELS
Claimant

APPEAL NO. 12A-UI-02603-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEN-WAY EXCAVATING SERVICE INC
Employer

**OC: 05/22/11
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for misconduct
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Amanda Bartels filed an appeal from the June 13, 2011, reference 01 decision that denied benefits. After due notice was issued, a hearing was held on March 30, 2012. Ms. Bartels initially participated, but voluntarily terminated her participation midway through the administrative law judge's questions for her regarding the timeliness of her appeal. Charlie Fisher represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat Ms. Bartels' late appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amanda Bartels established a claim for unemployment insurance benefits that was effective May 22, 2011. At the time Ms. Bartels established her claim for benefits, she provided Workforce Development with the following address: 2401 Kenway Blvd. SW, Cedar Rapids, IA 52404-7313. On June 11, 2011, a Workforce Development representative conducted a fact-finding interview. The Workforce Development representative attempted to contact Ms. Bartels on her cell phone, but was unable to reach her because Ms. Bartels had a pre-paid cell phone plan and did not have any minutes left on her phone. On June 13, 2011, Iowa Workforce Development mailed a copy of the June 13, 2011, reference 01, decision to Ms. Bartels' last known address of record, which was the address on Kenway Blvd. Ms. Bartels had moved from that address in May, but had not notified Workforce Development of the change of address. The decision mailed to Ms. Bartels on June 13, 2011, contained a warning that an appeal must be postmarked or received by the Appeals Section by June 23, 2011. At some point, Ms. Bartels mailed a change of address form to the post office. Ms. Bartels received the forwarded June 13, 2011, reference 01 decision, received it beyond the June 23, 2011 appeal deadline and decided not to take further action. At some point, Ms. Bartels again changed addresses.

On March 13, 2012, Ms. Bartels went to the Cedar Rapids Workforce Development Center. Ms. Bartels completed an appeal form with the assistance of a Workforce Development representative. The appeal form indicates the grounds for appeal as follows: "I want to appeal this decision. I never received the letter until after the 10 day hold period was over so I did not appeal it

back then.” This language indicates that Ms. Bartels had indeed received the forwarded June 13, 2011 decision back in 2011 and had decided at that time not to file an appeal because she was beyond the deadline. Ms. Bartels delivered her completed appeal form to the Workforce Development representative on March 13, 2012. The Cedar Rapids Workforce Development Center mailed Ms. Bartels’ appeal to the Appeals Section in an envelope that bears a March 13, 2012 postage meter mark.

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 appeal at issue in this case was filed on March 13, 2012, the day Ms. Bartels delivered her completed appeal to the Cedar Rapids Workforce Development Center and the day that Center mailed the appeal to the Appeals Section.

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 Ms. Bartels did indeed received the June 13, 2011, reference 01 decision in 2011, most likely in late June or in July 2011. Ms. Bartels did not have a reasonable opportunity to file an appeal within the ten-day deadline. The delay in receipt of the decision was attributable to the change in address, Ms. Bartels's failure to notify Workforce Development of the change of address, and the normal processes of the United States Postal Service's mail forwarding.

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 weight of the evidence indicates that Ms. Bartels received the decision in 2011, sometime after the June 23, 2011 appeal deadline, but then made a decision not to file an appeal until March 13, 2012. Ms. Bartels' delay from 2011 to March 13, 2012 before she filed her appeal was unreasonable. For this reason, the administrative law judge concludes that the evidence fails to establish good cause to treat the almost nine-months-late appeal as a timely appeal. 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 June 13, 2011, 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/kjw