

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN J THOMPSON
Claimant

APPEAL NO. 14A-UI-05083-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 01/05/14
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871 – 24.2(1)(e) – Failure to Report as Directed

STATEMENT OF THE CASE:

Jordan Thompson filed an appeal from the February 13, 2014, reference 01, decision that denied benefits effective January 5, 2014, based on an agency conclusion that Mr. Thompson had failed to report as directed. After due notice was issued, a hearing was held on June 5, 2014. Mr. Thompson participated. Tracey Lennon represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-05084-JTT. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Department Exhibits D-1 through D-4 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 February 13, 2014, Iowa Workforce Development mailed a copy of the February 13, 2014, reference 01, decision to Jordan Thompson at his last-known address of record in North Liberty. The decision denied benefits effective January 5, 2014, based on an agency conclusion that Mr. Thompson had failed to report as directed by the agency. The decision contained a warning that an appeal from the decision must be postmarked by February 23, 2014 or received by the appeals section by that date. Mr. Thompson received the decision in a timely manner, prior to the deadline for appeal, but did not take any steps to appeal the decision when he received it. Mr. Thompson had returned to work and did not give the matter more thought until May 6, 2014, when Iowa Workforce Development mailed a copy of a May 6, 2014, reference 02 overpayment decision to Mr. Thompson at the same address of record. The overpayment decision indicated that Mr. Thompson had been overpaid \$1,224.00 in unemployment insurance benefits for the three-week period of January 5, 2014 through January 25, 2014. The overpayment decision was based on the February disqualification decision. The May 6, 2014 decision carried a May 16, 2014 deadline for appeal. On May 14, 2014, Mr. Thompson drafted his appeal letter.

Mr. Thompson subsequently mailed his appeal to the Appeals Section. The envelope in which the appeal was submitted does not contain a postmark or a stamp, but appears to have been processed by the United States Postal Service. The Appeals Section received the appeal on May 19, 2014.

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).

The decision in question, submitted by mail, but lacking a postmark, was filed on May 14, 2014, the date the document indicates on its face it was drafted.

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. Mr. Thompson's testimony concerning his address of record, the documents in evidence, and the weight of the evidence leads to the conclusion that Mr. Thompson received the February 13, 2014, decision in a timely manner, but did not act on it when he got it. The employer's effort to advocate on behalf of Mr. Thompson in connection with the timeliness issue was rebutted by Mr. Thompson's own testimony. The weight of the evidence indicates that Mr. Thompson received decision, had already ceased receiving benefits and had returned to work, and did what many similarly situated claimants do. Mr. Thompson turned his attention to other matters and did not return to the matter until the agency contacted him months later with a decision indicating he had to repay benefits.

The administrative law judge concludes that Mr. Thompson's failure to file a timely appeal from the February 13, 2014, reference 01, decision 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), the administrative law judge lacks jurisdiction to disturb the lower decision that disqualified Mr. Thompson for benefits effective January 5, 2014. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claims deputy's February 13, 2014, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision that disqualified the claimant for benefits effective January 5, 2014 remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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