

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERTO TARELO**  
Claimant

**APPEAL NO. 14A-UI-13011-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2) – Discharge for Misconduct  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Roberto Tarelo filed an appeal from the October 29, 2014, reference 02, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on an Agency conclusion that he had been discharged on October 6, 2014 for misconduct in connection with the employment. After due notice was issued, a hearing was held on March 3, 2015. Mr. Tarelo participated. Amanda Lange of Equifax represented the employer and presented testimony from Doug Carter. The hearing in this matter was consolidated with the hearing in Appeal No. 14A-UI-13012-JTT. Department Exhibits D-1, D-2, and D-3 were 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 October 29, 2014, Iowa Workforce Development mailed a copy of the October 29, 2014, reference 02, decision to claimant Roberto Tarelo's last known address of record. The decision disqualified Mr. Tarelo for benefits and relieved the employer's account of liability for benefits, based on an Agency conclusion that he had been discharged on October 6, 2014 for misconduct in connection with the employment. Mr. Tarelo received the decision November 3, 2014. The decision contained a warning that an appeal from the decision must be postmarked by November 8, 2014 or received by the Appeals Section by that date. Mr. Tarelo had noted the deadline for appeal when had received and reviewed the decision, but did not file an appeal by the November 8, 2014 deadline.

The October 29, 2014, reference 02, decision had been based on a claim year that started for Mr. Tarelo on October 20, 2013. After that claim year expired, Mr. Tarelo established a new claim year that was effective November 23, 2014. On December 9, 2014, Iowa Workforce Development mailed Mr. Tarelo a copy of the December 9, 2014, reference 01, decision that disqualified him for benefits in the new claim year, based on an Agency conclusion that the

October 29, 2014 decision remained in effect. The December 9, 2014, reference 01, decision contained a December 19, 2014 deadline for appeal. On December 16, 2014, Mr. Tarelo went to the Sioux City Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the Center staff. The Appeals Section received the appeal by fax the next day and treated the appeal as an appeal from both decisions.

#### **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. Tarelo's appeal was filed on December 16, 2014, the day on which Mr. Tarelo delivered his completed appeal form to the Sioux City Workforce Development Center staff.

The evidence in the record establishes that more than ten calendar days elapsed between the October 29, 2014, mailing date of the reference 02 decision 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 October 29, 2014, reference 02, decision by the November 8, 2014 appeal deadline, but elected not to file an appeal until December 16, 2014.

Mr. Tarelo'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. Tarelo had failed to preserve his right to challenge the October 29, 2014, reference 02, decision and the administrative law judge lacks jurisdiction to disturb that 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 October 29, 2014, reference 02, decision is affirmed. The appeal in the decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based the October 6, 2014 discharge, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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