

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TONJA L JACKSON**  
Claimant

**APPEAL NO. 07A-UI-09626-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 08/05/07 R: 02**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tonja Jackson filed an appeal from the August 28, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 30, 2007. Ms. Jackson participated. Steve Zaks of Barnett Associates represented the employer. Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether there is good cause to deem the claimant's late appeal timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Jackson established a claim for benefits that was effective August 5, 2007. At the time Ms. Jackson established her claim for benefits, she provided the following address to Iowa Workforce Development: P.O. Box 8222, Des Moines, Iowa 50301-8222. Ms. Jackson had shared the post office box with another individual, but had not had access to her key to the lock box since June 19, 2007. Ms. Jackson knew at the time she provided the address to Iowa Workforce Development that she did not have access to the post office box. Ms. Jackson never notified Iowa Workforce Development of a change in her address of record. At the time Ms. Jackson established her claim for benefits, she was subject to a restraining order that prevented her from contacting the person with whom she shared the post office box. While Ms. Jackson was subject to the restraining order, Ms. Jackson took no steps, through the court, by contacting law enforcement, or by contacting the United States Postal Service, to gain access to her mail that was accumulating in the post office box. A week after Ms. Jackson filed her claim, she attempted to use the Agency's automated telephone weekly reporting system and received a message that there was a problem with her claim for benefits. Ms. Jackson contacted a Workforce Development representative, who advised Ms. Jackson she would be receiving further correspondence from the Agency by mail. Ms. Jackson did not advise the Workforce Development representative that she lacked access to her post office box and did not provide a different mailing address.

On August 28, 2007, Iowa Workforce Development mailed the reference 01 decision denying benefits to Ms. Jackson's last-known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 7, 2007.

Ms. Jackson finally collected her accumulated mail from the post office box on or about September 20, 2007. Ms. Jackson did not review the August 28, 2007, reference 01, decision until several days later. Ms. Jackson then waited until October 15, 2007 to go to the Des Moines Workforce Development Center and complete an appeal. The local Workforce Development center received Ms. Jackson's appeal on October 15 and forwarded it to the Appeals Section.

## **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 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. The evidence indicates that Ms. Jackson failed to provide an appropriate address to Iowa Workforce Development when she established her claim, failed to take reasonable and timely steps to reroute her mail from the unavailable post office box, and failed to take reasonable and timely steps to gain access to post office box that contained her mail.

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 evidence indicates that once Ms. Jackson accessed her post office box in mid-September, she unreasonably delayed in reviewing the correspondence from Iowa Workforce Development and unreasonably delayed filing her appeal.

At the appeal hearing, Ms. Jackson testified that severe depression prevented her from filing a timely appeal. The hearing record provided no credible evidence to support Ms. Jackson's assertion that mental health issues were a factor in the delayed filing of the appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). 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 August 28, 2007, 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/css