

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

RAYMOND M BARTH  
2508 UNION RD #50  
CEDAR FALLS IA 50613

MANPOWER INC OF CEDAR RAPIDS  
1220 INDUSTRIAL AVE  
HIAWATHA IA 52233-1155

Appeal Number: 05A-UI-03392-RT  
OC: 12-26-04 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Raymond M. Barth, filed an appeal from an unemployment insurance decision dated February 9, 2005, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 19, 2005, with the claimant participating. Debra Chamberlain, Risk Control Manager, participated in the hearing for the employer, Manpower, Inc. of Cedar Rapids. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on February 9, 2005, reference 02, determining that the claimant was not eligible to receive unemployment insurance benefits because he voluntarily quit work on January 6, 2005. This decision was sent on the same date to the claimant. This decision indicated that an appeal had to be postmarked or otherwise received by the appeals section by February 21, 2005 (the decision said February 19, 2005 but since this was a Saturday, the appeal would be due the next business or working day). However, the claimant's appeal was faxed to the Appeals section on March 31, 2005, over one month late. The appeal was dated March 31, 2005 as shown at Department's Exhibit One. The reason for the delay was that the claimant was in jail. The claimant was incarcerated from January 10, 2005 to March 25, 2005 because of a probation violation. His incarceration was unrelated to his employment. At the time, the claimant was working at a long-term full-time assignment from the employer to Traer which began June 30, 2004. That assignment had no ending date and work was still available to the claimant when he had to quit work because he was incarcerated.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal, or, if not, whether the claimant can demonstrate good cause for such failure. The administrative law judge concludes that the claimant's appeal was not timely and that the claimant did not demonstrate good cause for delay in the filing of his appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.

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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- a. If transmitted via the United States postal service, 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 is 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.
- b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

- (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.
  - a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
  - b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
  - c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.
  - d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that his appeal was timely or that he had good cause for delay in the filing of his appeal. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence either that his appeal was timely or that he had good cause for the delay in the filing of his appeal. On its face as shown at Department Exhibit One and as set out in the findings of fact, the claimant's appeal is over one month late. The only reason for the claimant's delay in filing his appeal, was that he was incarcerated from January 10, 2005 to March 25, 2005. This incarceration was not related to his employment. When the claimant was released from jail, he found the decision in his mail. The claimant had had his mail held while he was in jail. There is no evidence that the decision from which the claimant sought to appeal was not properly delivered by the U.S. Postal Service because it was in the accumulated mail received by the claimant when he was released from jail on or about March 25, 2005. The administrative law judge concludes that there is no evidence that the delay in filing the appeal was due to any error or misinformation from Iowa Workforce Development or to delay or other action by the U.S. Postal Service. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated February 9, 2005, is not timely and the claimant has not demonstrated good cause for the delay in the filing of his appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the issue of separation. The administrative law judge further concludes that the representative's decision of February 9, 2005, reference 02, should remain in full force and effect.

Although the administrative law judge has no jurisdiction to reach the separation issue, the administrative law judge would note that the claimant was fully employed at a long-term assignment at the time he was incarcerated and there was still work available for him there but he could not perform the work because he was incarcerated. The incarceration had nothing to do with his employment. 871 IAC 24.25(16) provides that the claimant is deemed to have left

work if such claimant becomes incarcerated. Here, the claimant is deemed to have left his employment voluntarily when he was incarcerated and his incarceration had nothing to do with his employer therefore his leaving would not be with good cause attributable to the employer.

DECISION:

The representative's decision dated February 9, 2005, reference 02, is to remain in full force and effect. The claimant, Raymond M. Barth, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant's attempted appeal was not timely and the claimant has not demonstrated good cause for its delay.

sc/pjs