**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM J CLENNON**
Claimant

**TRADESMEN INTERNATIONAL**
Employer

**APPEAL NO. 15A-UI-10552-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 09/21/14**
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

William Clennon filed an appeal from the September 4, 2015, reference 02, decision that denied benefits effective August 2, 2015, based on an Agency conclusion that he was unduly limiting his work availability by being out of town. After due notice was issued, a hearing was held on October 6, 2015. Mr. Clennon participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did participate. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-10553-JTT. Exhibit A and Department Exhibit D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**ISSUE:**

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 September 4, 2015, Iowa Workforce Development mailed a copy of the September 4, 2015, reference 02, decision to William Clennon's last-known address of record. Mr. Clennon's address of record is a friend's apartment in Kansas City, Missouri. Mr. Clennon did not live at that apartment, but had his mail directed to that address. When Mr. Clennon was not working, he resided in Springfield, Missouri to be close to his young son. Mr. Clennon relied on his friend to discern that mail was important mail, to contact him about the important mail, and to overnight the important mail to him. The weight of the evidence establishes that the decision mailed to the address of record on September 4, 2015 was most likely received in a timely manner at that address and overlooked, either by Mr. Clennon's friend or by Mr. Clennon. Mr. Clennon had not contacted Iowa Workforce Development to have his mail forwarded to his address in Springfield. The September 4, 2015, reference 02, decision contained a warning that an appeal from the decision must be postmarked by September 14, 2015 or received by the Appeals Section by that date.

On September 10, 2015, Iowa Workforce Development mailed a copy of the September 20, 2015, reference 04, decision to Mr. Clennon's address of record in Kansas City, Missouri. That decision held that Mr. Clennon had been overpaid $1,664.00 in benefits for the four-weeks between August 2, 2015 and August 29, 2015. The decision contained a September 20, 2015 appeal deadline. Because that date was a Sunday, the deadline was extended by operation of law to Monday, September 21, 2015. On September 21, 2015, Mr. Clennon drafted his appeal letter and faxed it to the Appeals Section. The Appeals Section received the appeal the same day and treated it as an appeal from the overpayment decision and the September 4, 2015, reference 02, decision that denied benefits.

**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. Clennon's appeal was filed on September 21, 2015, when the Appeals Section received the faxed appeal.

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 weight of the evidence record shows that Mr. Clennon did have a reasonable opportunity to file a timely appeal from the September 4, 2015, reference 02, decision that denied benefits effective August 2, 2015. Mr. Clennon wholly delegated to his friend in Kansas City the responsibility to collect and sort his mail, to discern what was important, and to forward the important mail to his residence in Springfield. Mr. Clennon presented insufficient evidence to establish that the September 4, 2015, reference 02, decision was not received at his Kansas City address of record in a timely manner. The administrative law judge notes that Mr. Clennon elected not to present any testimony from his friend. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge concludes that failure to file a timely appeal from the September 4, 2015, reference 02, 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). 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 September 4, 2015, reference 02, decision is affirmed. The claimant's appeal from the decision is untimely. The decision that denied benefits effective August 2, 2015, based on an Agency conclusion that the claimant was unduly restricting his work availability remains in effect for the period through September 26, 2015.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs