

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAYLOR J SIMMONS

Claimant

APPEAL NO. 15A-UI-03306-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF INDEPENDENCE

Employer

OC: 11/09/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Taylor Simmons filed an appeal from the March 2, 2015, reference 05, decision that denied benefits effective February 1, 2015, based on an Agency conclusion that Mr. Simmons was not available for work within the meaning of the law. After due notice was issued, a hearing was held on May 11, 2015. Mr. Simmons participated. Barbara Rundle, City Clerk and City Treasurer, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-03307-JTT. The administrative law judge took official notice of the Agency's record of wages reported by or for the claimant and benefits disbursed to the claimant. Department Exhibits D-1 and D-2 were received into evidence.

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 March 2, 2015, Iowa Workforce Development mailed a copy of the March 2, 2015, reference 05, decision to claimant Taylor Simmons at his last-known address of record. The decision denied benefits effective February 1, 2015, based on an Agency conclusion that Mr. Simmons was not available for work within the meaning of the law. The decision contained a warning that an appeal from the decision must be postmarked by March 12, 2015 or received by the Appeals Section by that date. Mr. Simmons received the reference 05 decision on or about March 4, 2015. On March 9, 2015, Mr. Simmons drafted his appeal. On March 12, 2015, Mr. Simmons deposited his appeal in a post office box after the last mail pick up of the day. The appeal was postmarked March 13, 2015. The Appeals Section received the appeal on March 16, 2015.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Simmons appeal was filed on March 13, 2015, the postmark date on the envelope in which the appeal was mailed.

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 Mr. Simmons did have a reasonable opportunity to file a timely appeal from the March 2, 2015, reference 05, decision. The evidence also indicates that Mr. Simmons took steps that delayed the filing of his appeal. He waited five days from receipt of the decision to draft an appeal. He then waited another three days to put the appeal in the mail stream, and did so after the last mail pick up on the day the appeal was due. Under such circumstances, the administrative law judge cannot conclude that the post office made the appeal late. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). Because the delay in filing the appeal was attributable to Mr. Simmons, the evidence fails to establish good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was untimely, Mr. Simmons has failed to preserve his right to appeal from the reference 05 decision and the administrative law judge lacks jurisdiction to disturb the reference 05 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 March 2, 2015, reference 05, decision is affirmed. The claimant's appeal was untimely. The decision that denied benefits effective February 1, 2015, based on an Agency conclusion that the claimant was not available for work within the meaning of the law, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css