

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY D KOLPIN
Claimant

APPEAL NO: 13A-UI-08845-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND COMPANY
Employer

OC: 06/02/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Corey D. Kolpin (claimant) appealed a representative's June 17, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Archer-Daniels-Midland Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2013. The claimant participated in the hearing. John O'Donnell appeared on the employer's behalf. One other witness, Scott Schaeffer, was available on behalf of the employer but did not testify. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on June 17, 2013. The claimant received the decision within a short time thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 27, 2013, a Thursday. The appeal was not filed until it was received by the Appeals Section on August 1, 2013, which is after the date noticed in the disqualification decision. The claimant had signed and dated his appeal on July 29, 2013, also after the date noticed in the disqualification decision, but had difficulty in locating the building in which the Appeals Section was located, so turned it over to an Agency representative in a local Agency office on or about July 30 for delivery to the Appeals Section. The claimant had delayed making his appeal until on or about July 30 because he believed it was essential that he be able to locate a particular document mentioned in his fact-finding interview before he pursued his appeal, and he had not found that by the June 27 appeal deadline. Rather than going ahead and submitting his appeal

without first finding the desired document, and rather than contacting an Agency representative for information or advice as to what he should do about the appeal deadline without having the document he believed he needed, he determined to continue searching and not make his appeal until he located the desired document.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. Deciding not to appeal until a particular desired document is found is not a reason for delay that is attributable to Agency error or misinformation or to delay or other action of the United States postal service, but is a personal choice on the part of the appellant. The appellant did have a reasonable opportunity to file a timely appeal, but failed to do so.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The representative's June 17, 2013 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs