IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEBRA K HONTS
Claimant

TMONE INC
EXECUTIVE MANAGEMENT
Employer

APPEAL NO. 14A-UI-00106-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/15/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 22, 2013, reference 04, decision that allowed benefits to claimant Debra Honts effective October 13, 2013, based on an agency conclusion that Ms. Honts was available for work. After due notice was issued, a hearing was held on January 15, 2013. Ms. Honts participated personally and was represented by attorney, Paul McAndrew. Attorney John Daufeldt represented the employer and presented testimony through Leah Lee. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-13263-JTT. Department Exhibit D-1 was received into evidence. The employer waived an alleged defect in the hearing notice period.

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 Friday, November 22, 2013, Iowa Workforce Development mailed two decisions to the employer concerning claimant Debra Honts. The first was the November 22, 2013, reference 03, decision that allowed benefits to Ms. Honts, provided she was otherwise eligible, and that held the employer's account could be charged for benefits. That decision was based on Ms. Honts' separation from the employment. The second decision was the November 22, 2013, reference 04, decision that allowed benefits to Ms. Honts effective October 13, 2013, provided she was otherwise eligible, based on an agency conclusion that Ms. Honts was available for work. Both decisions contained a warning that an appeal must be postmarked by December 2, 2013 or received by Workforce Development by that day.

Workforce Development directed both decisions to 308 E. Burlington Street, #28, Iowa City, Iowa 52240. That was the address of record that Workforce Development had on file for the employer. The employer had not completed a change of status form to change the address of record from that address. The street address corresponds to Mailboxes of Iowa City, a private

mail processing and shipping entity. The employer outsources its mail processing to Mailboxes of Iowa City and has two assigned boxes at Mailboxes of Iowa City, #288 and #402. The employer does not use #28 at Mailboxes of Iowa City, but has received mail directed to #28. Prior to the filing of the appeal in this matter, the employer had not contacted Workforce Development to request correction of its box designation at 308 E. Burlington Street. The employer has not contacted Mailboxes of Iowa City to inquire whether Workforce Development's use of #28 in the employer's address resulted in any delay in processing the two decisions that Workforce Development mailed to the employer on November 22, 2013.

The weight of the evidence indicates that both decisions were received at the employer's address of record on or about Monday, November 25, 2013, the same day the claimant received her copy of the decisions in North Liberty.

The employer has two support staff who retrieve the employer's mail from Mailboxes of Iowa City and process it for further distribution within TmOne, L.L.C. Those two people are Lisa Stears and Christina Thompson. Both women continue to be employed by TmOne, L.L.C. The employer cannot say with any measure of certainty what day Ms. Stears and/or Ms. Thompson collected the two November 22, 2013 decisions concerning Ms. Honts from Mailboxes of Iowa. The employer cannot say with any measure of certainty how long the two decisions were waiting at Mailboxes of Iowa City before the employer's staff collected the decisions from that facility. The employer destroyed the envelopes in which Workforce Development mailed the decisions to the employer. The employer's staff did not date-stamp or otherwise document on the decisions the date on which TmOne received the decisions. The employer cannot say with any measure of certainty what day Ms. Stears and/or Ms. Thompson processed the two decisions regarding Ms. Honts' unemployment insurance claim for further distribution within TmOne, L.L.C. The employer cannot say with any measure of certainty how long the employer's support staff had the two decisions in their possession before they were forwarded to Leah Lee, Controller and Vice President, for further action by Ms. Lee. The employer's standard practice is to process and distribute incoming mail the same day it is received.

Ms. Lee received the two decisions into her possession on or about December 2, 2013, the day the appeals were due. December 2, 2013 was also the first Monday following the Thanksgiving Holiday. Ms. Lee contacted attorney, John Daufeldt. On December 4, 2013, Mr. Daufeldt prepared an appeal from both decisions and faxed the employer's appeal to the Appeals Section. The Appeals Section received the appeal on December 4, 2013 and date-stamped it as received that day.

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).

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 employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that the employer did not have a reasonable opportunity to file a timely appeal. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular." Iowa Code § 622.56; *accord City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). There is a presumption that the decisions were mailed by Workforce Development on November 22, 2013. This is not an absolute presumption, but rather it is one that may be overcome with sufficiently probative evidence. The employer has not presented sufficient evidence to establish that either decision was mailed to the employer on a date other than November 22, 2013. The administrative law judge notes that the employer

destroyed relevant and material evidence, the envelopes in which the decisions were mailed to the employer. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that the decisions were received by Mailboxes of Iowa in anything other than a timely manner. A reasonable person would expect mail sent from Des Moines to Iowa City to arrive within a day or two of the mailing date. That would mean that the decisions would have arrived at Mailboxes of Iowa City on Saturday, November 23 or Monday, November 25, a much more likely set of circumstances than the implausible notion that it took ten days for the decisions to travel in the mail from Des Moines to Iowa City.

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that the use of #28, rather than #288, in the address, resulted in any delay at all in Mailboxes of Iowa City's processing of the decisions. The employer did not consult with Mailboxes of Iowa City on the matter and presented testimony from any representative from Mailboxes of Iowa City. The employer had the ability to present such testimony.

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that the employer's staff promptly collected the correspondence from Mailboxes of Iowa City or that the employer's staff promptly processed and forwarded the correspondence to Ms. Lee. The employer presented no testimony from the support staff who collected the correspondence from Mailboxes of Iowa City and who processed the correspondence internal to TmOne. The employer had the ability to present such testimony.

Almost all of the employer's testimony concerning when TmOne received the decisions consisted of speculation, unsupported theories presented in the alternative. The employer's credibility during the hearing was not at all helped by Mr. Daufeldt's audible coaching of Ms. Lee as Ms. Lee was testifying on cross-examination. Such conduct indicates bad faith on the part of the employer.

The administrative law judge concludes that employer's failure to file a timely appeal 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 § 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 November 22, 2013, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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