

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELISABETH M ROBINSON**  
Claimant

**APPEAL NO. 09A-UI-15520-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**  
Employer

**OC: 09/13/09**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 1, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 17, 2009. Claimant Elisabeth Robinson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Alicia Alonzo, Human Resources Generalist, represented the employer and presented additional testimony through Loretta Gelinias, Barnett & Associates Client Service Representative. Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether there is good cause to treat the employer's late appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 1, 2009, Iowa Workforce Development mailed a copy of the reference 01 decision to the employer's address of record. The decision allowed benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 11, 2009. The decision also said that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the appeal period would be extended until the next working day. October 11, 2009 was a Sunday. October 12, 2009, was Columbus Day, a federal holiday on which the United States Postal Service suspended mail delivery service. The next working day was Tuesday, October 13, 2009.

The employer's representative of record is Barnett & Associates. The employer's address of record is care of Barnett & Associates, P.O. Box 7340, Garden City, NY 11530. The employer representative received the October 1, 2009, reference 01, decision on October 3, 2009. Loretta Gelinias, Barnett & Associates Client Service Representative, prepared the employer's appeal. Ms. Gelinias planned to draft and file the appeal on Tuesday, October 13, 2009, the extended due date for the appeal. On October 13, 2009, Ms. Gelinias was called away from

work on personal business. On October 14, 2009, Ms. Gelinas drafted the employer's appeal. On the same day the Barnett & Associates clerical staff faxed the appeal to the Appeals Section. The Appeals Section received the faxed appeal on October 14, 2009.

### **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 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 any means other than the mail 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 appeal in this matter was filed on October 14, 2009, when the Appeals Section received the faxed appeal. This was one day after the October 13, 2009 extended deadline for appeal.

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 the employer/appellant did have a reasonable opportunity to file a timely appeal. The employer representative received the decision within two days of its mailing and ten days prior to the deadline for appeal that had been extended two days by operation of law.

The administrative law judge concludes that the 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 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 Agency representative's October 1, 2009, reference 01, 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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