

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DERRICK T BURRAGE**

Claimant

**APPEAL NO. 13A-UI-04299-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**

Employer

**OC: 03/10/13**

**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Derrick Burrage filed an appeal from the March 29, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 16, 2013. Mr. Burrage participated. Meredith Grothus represented the employer. 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 29, 2013, Workforce Development mailed a copy of the March 29, 2013, reference 01, decision to Derrick Burrage's last-known address of record. The decision denied benefits. The decision carried on its face a warning that any appeal must be postmarked by April 8, 2013 or received by the Appeals Section by that same date. The decision arrived at Mr. Burrage's address of record in a timely manner, prior to the deadline for appeal. Mr. Burrage saw and read the decision prior to the deadline for appeal. The decision contained clear and concise instructions on how to file an appeal. The decision also provided a telephone number Mr. Burrage could call if he had questions about the decision or the appeal process.

At some later date, close in time to the deadline for appeal, Mr. Burrage went to the Davenport Workforce Development Center at around 4:30 p.m. as they were closing for the day. He indicated he had questions about filing his appeal. A Workforce Development representative told Mr. Burrage there was no one there at the time who could assist him. The Workforce Development representative provided Mr. Burrage with a business card containing a number he could call to get answers to his questions. Mr. Burrage called that number the same day and got answers to his questions.

Some days later, on April 10, 2013, Mr. Burrage returned to the Workforce Development Center and partially completed an appeal form. Mr. Burrage left blank the date of the decision he was

appealing. Mr. Burrage left blank the date he had received the decision. Mr. Burrage erroneously dated the appeal as signed April 9, 2013. Mr. Burrage delivered the appeal form to a Workforce Development representative. The Workforce Development representative immediately faxed the appeal form to the Appeals Section. The Appeals Section received the faxed appeal form on April 10, 2013. The decision indicates on its face that it was faxed from the Davenport Workforce Development Center on April 10, 2013. The Appeals Section date-stamped the appeal as received on April 10, 2013.

## **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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. Mr. Burrage received the decision in a timely manner, prior to the deadline for appeal. He most likely received the decision no later than March 31, 2013. Though the decision contained clear and concise instructions for filing an appeal, and also contained a phone number Mr. Burrage could call to get his questions answered, Mr. Burrage decided he wanted to speak to someone in person. Mr. Burrage delayed doing that and, close in time to the deadline for appeal, elected to appear at the Davenport Workforce Development Center at closing time. Mr. Burrage was provided with a number he could call to get answers to his questions. Mr. Burrage called and got answers that same day. Mr. Burrage then delayed taking further steps to file his appeal. Though Mr. Burrage suggests it was delay of a couple days, the weight of the evidence suggests the delay was longer. Mr. Burrage appeared at the Davenport Workforce Development Center on April 10, 2013, two days after the appeal deadline had passed. He partially completed an appeal form, delivered it to a Workforce Development representative, and the representative immediately faxed the appeal to the Appeals Section.

The weight of the evidence establishes that untimely filing of the appeal was attributable to delay on the part of Mr. Burrage, and 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). The administrative law judge lacks jurisdiction to disturb the lower decision, due to the untimeliness 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 March 29, 2013, 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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