

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L LUNDY**  
Claimant

**APPEAL NO. 14A-UI-12320-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED OAK COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 08/10/14**  
**Claimant: Appellant (1)**

Iowa Code section 96.4(5) – Between Academic Terms Disqualification  
Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Michael Lundy filed an appeal from the September 4, 2014, reference 01, decision that denied benefits effective August 10, 2014; based on Agency conclusion that his unemployment occurred between academic years or terms and that he was ineligible under the disqualification provision set forth at Iowa Code Section 96.4(5). After due notice was issued, a hearing was held on December 19, 2014. Mr. Lundy participated. Shirley Maxwell represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUES:**

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 September 4, 2014 Iowa Workforce Development mailed a copy of the reference 01 decision to Michael Lundy's last-known address of record. The reference 01 decision was one of four decisions mailed to Mr. Lundy on that day. The decision denied benefits effective August 10, 2014 based on the between-academic-terms disqualification set forth at Iowa Code Section 96.4(5). The reference 01 decision contained a warning that an appeal from the decision must be postmarked by September 14, 2014 or received by the Appeals Section by that date. The decision contained a telephone number Mr. Lundy could call to get answers to any questions he had about the decision. Mr. Lundy received the reference 01 decision in a timely manner, on or before September 8, 2014.

Mr. Lundy did not immediately file an appeal from the reference 01 decision. Though the reference 01 decision denied benefits, other decisions Mr. Lundy had received at the same time indicated that he was eligible for benefits based on non-education related employment provided he was otherwise eligible. Mr. Lundy concluded that he did not need to file an appeal from the decision. Mr. Lundy continued to attempt to make on-line weekly claims for benefits. On or about November 25, 2014 Mr. Lundy contacted Iowa Workforce Development regarding issues

he had encountered in attempting to make on-line weekly claims for benefits. An Agency representative spoke to Mr. Lundy at that time regarding the reference 01 decision and other decisions that had denied benefits based on education-related employment. On November 25, 2014 Mr. Lundy downloaded an appeal from the Agency's website and filled out the appeal form. On November 26, 2014, Mr. Lundy mailed his appeal to the Appeals Section. The Appeals Section received the appeal on December 1, 2014.

## **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).

Mr. Lundy's appeal was filed on November 26, 2014, the postmark date on the envelope in which the appeal was submitted.

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. Lundy had a reasonable opportunity to file an appeal from the reference 01 decision by the September 14, 2014 deadline. Mr. Lundy received the reference 01 decision on or before September 8, 2014. As of that date, Mr. Lundy still had six days in which to file an appeal. If Mr. Lundy had any questions about the meaning of the decision that denied benefits, the decision provided him with a telephone number he could use to get clarification.

Mr. Lundy's failure to file an 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 delay was instead attributable to Mr. Lundy not taking steps to file a timely appeal and not taking readily available and timely steps to obtain answers to any questions he had about the reference 01 decision. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Mr. Lundy has failed to preserve his right to challenge that decision and the administrative law judge lacks jurisdiction to disturb the 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 September 4, 2014, reference 01, decision is affirmed. The appeal in this case was not timely and the decision, that denied benefits effective August 10, 2014 based on the between-academic-terms disqualification provision at Iowa Code Section 96.4(5), 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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