

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER G BRADY**  
Claimant

**APPEAL NO. 09A-UI-10724-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R & R INVESTORS INC**  
Employer

**OC: 02/22/09**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(5) – Severance Pay  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tyler Brady filed an appeal from the June 11, 2009, reference 01, decision that denied benefits for the three-week period ending March 21, 2009 based on the Agency's conclusion that he had received severance pay. After due notice was issued, a hearing was held by telephone conference call on August 12, 2009. Mr. Brady participated. Kathy Hayes, Vice President – Human Resources, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-10725-JTT and 09A-UI-10726-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence. The employer waived any notice defects in this matter.

**ISSUE:**

Whether there is good cause to deem timely Mr. Brady's late appeal from the June 11, 2009, reference 01 decision.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 11, 2009, Workforce Development mailed a copy of the reference 01, decision to Tyler Brady's last-known address of record. The decision denied benefits for the three-week period ending March 21, 2009 based on the Agency's conclusion that Mr. Brady had received severance pay deductible from his unemployment insurance benefits. Mr. Brady's application for unemployment insurance benefits had been prompted by his February 2009 separation from employer R & R Investors. Mr. Brady had executed a Severance Agreement and General Release in March 2009 in connection with his separation from employer R & R Investors, Inc. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 21, 2009. Mr. Brady received the decision in a timely manner, prior to the deadline for appeal. The reference 01 decision misstated the name and address of the employer in interest. But the decision clearly identified Mr. Brady as the claimant in interest, clearly denied benefits, clearly stated the basis for the denial of benefits, and clearly stated the appeal deadline and appeal instructions. In addition, the decision provided a telephone number

that Mr. Brady could call if he had any questions about the decision or needed further information.

At the same time Mr. Brady received the June 11, 2009, reference 01 decision, he received the reference 02 decision that denied benefits for the week ending February 28, 2009 based on the Agency's conclusion that Mr. Brady had received vacation pay. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 22, 2009. Mr. Brady received the decision in a timely manner, prior to the deadline for appeal. The reference 02 decision included the correct name and address for the employer. The decision clearly identified Mr. Brady as the claimant in interest, clearly denied benefits, clearly stated the basis for the denial of benefits, and clearly stated the appeal deadline and appeal instructions. In addition, the decision provided a telephone number that Mr. Brady could call if he had any questions about the decision or needed further information.

Mr. Brady took no action on either decision until he received the reference 03 overpayment decision that Workforce Development mailed to him on July 14, 2009 with a July 24, 2009 deadline for appeal. On July 22, 2009, Mr. Brady mailed his appeal in an envelope bearing a legible July 22, 2009 postage meter mark. The Appeals Section received the appeal materials on July 28, 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 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). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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 appeal in this matter was filed on July 22, 2009, the date of the postage meter mark on the envelope in which the appeal was received. This was a full month after the deadline for appeal of the June 11, 2009, reference 01 decision and a full month after the deadline for appeal of the June 12, 2009 reference 02 decision.

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).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal from the June 11, 2009, reference 01 decision. Mr. Brady asserts that he stopped reading, and took no further action upon, the June 11, 2009, reference 01 decision as soon as he noted the erroneous employer name and address. Mr. Brady asserts he concluded the decision did not concern him. A reasonable person would not have drawn that conclusion. Despite the defect in the *employer's* name and address, the decision clearly identified Mr. Brady as the claimant in interest, clearly denied benefits, clearly stated the basis for the denial of benefits, and clearly stated the appeal deadline and appeal instructions. In addition, the decision provided a telephone number that Mr. Brady could call if he had any questions about the decision or needed further information. Mr. Brady's receipt of the reference 02 decision at that same time further reinforced that the matters concerned Mr. Brady. The administrative law judge notes that Mr. Brady failed to file an appeal from *either* decision until a month after the deadline. Mr. Brady's argument that the reference 01 decision gave him insufficient notice of a decision affecting his claim for benefits is without merit.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency 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 June 11, 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

jet/pjs