

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERMAN MABLES

Claimant

APPEAL NO. 09A-UI-17654-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 09/20/09

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:

Herman Mables filed an appeal from the October 15, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 5, 2010. Mr. Mables participated. Kris Travis represented the employer. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the notes taken by the fact-finder in connection with the October 13, 2009 contact with the claimant.

ISSUE:

Whether there is good cause to deem Mr. Mables' late appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A fact-finding interview was scheduled for October 9, 2009. The claimant, Herman Mables, did not participate in the fact-finding interview scheduled for that day. However, Mr. Mables spoke to the fact-finder on October 13, 2009 and provided information that was considered by the fact-finder. As part of his contact with the fact-finder on October 13, 2009, Mr. Mables provided an updated address to the Workforce Development representative: 1214 – 4th St. Ave. SE, Cedar Rapids, IA 52403. That address is for a homeless shelter.

On October 15, 2009, Workforce Development mailed a copy of the reference 01 decision to the updated address Mr. Mables had provided on October 13, 2009. The decision denied benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 25, 2009. Mr. Mables does not recall whether or when he received the decision. The weight of the evidence indicates the decision was most likely received at the address provided by Mr. Mables in a timely manner prior to the deadline for appeal.

Mr. Mables moved from the shelter to a new address, but did not provide the update address to Workforce Development until he went to the Cedar Rapids Workforce Development Center on

November 20, 2009. Mr. Mables had also made no arrangements with the Postal Service to have his mail forwarded to his newest residence.

On November 20, 2009, Mr. Mables went to the Cedar Rapids Workforce Development Center to inquire about the status of his benefits. This contact occurred more than five weeks after he had spoken to the fact-finder and after a decision had been mailed to him at his last known address of record. While at the Cedar Rapids Workforce Development, Mr. Mables learned that he had been denied benefits and that the deadline for appeal had passed. Mr. Mables completed an appeal form and left it with the Workforce Development staff. Mr. Mables provided the newest address on the appeal form and Workforce Development promptly began directing correspondence with Mr. Mables to the newest address.

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 at issue in this case was filed on November 20, 2009, when Mr. Mables delivered the completed appeal form to the staff at the Cedar Rapids Workforce Development Center.

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 weight of the evidence indicates that Mr. Mables would have had a reasonable opportunity to file a timely appeal had he made reasonable and appropriate arrangements for receiving his mail.

The weight of the evidence also indicates that Mr. Mables unreasonably delayed filing an appeal. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c). The administrative law judge found not credible Mr. Mables' testimony that the fact-finder told him neither that he could expect to receive a decision nor anything about when he could expect to receive the decision. Mr. Mables' failure to follow up on the matter for more than five weeks after the contact with the fact-finder was unreasonable.

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 October 15, 2009, reference 01, disqualification decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs