IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JORDAN L ZIMMERLINE
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 14A-UI-04473-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/16/14
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Jordan Zimmerline filed an appeal from the March 11, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on May 19, 2014. Mr. Zimmerline participated personally and was represented by this grandmother, Cynthia Campbell. Ms. Campbell and Mr. Zimmerline both testified. Michael Payne represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat the late appeal as timely. There is not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jordan Zimmerline is a 25-year-old man without disability. Mr. Zimmerline established a claim for unemployment insurance benefits that was effective February 16, 2014. Mr. Zimmerline used the Iowa Workforce Development website to establish his claim. At the time Mr. Zimmerline established his claim for benefits, he provided Workforce Development with a mailing address: 407 S.E. 3rd, Greenfield, IA 50849. Mr. Zimmerline did not reside at that address, which was the address for his parents' residence. Effective August 2013, Mr. Zimmerline resided at 411 S.W. Kent Street, Apt. 4, Greenfield, IA 50849-1354. Mr. Zimmerline did not provide Workforce Development with the Kent Street address until he filed an appeal on April 30, 2014.

A couple weeks after Mr. Zimmerline filed a claim for benefits during the week that started February 16, 2014, he contacted the Creston Workforce Development Center for an update on his claim. Mr. Zimmerline lives about 20 miles away from the Creston Workforce Development Center. Before Mr. Zimmerline contacted the Workforce Development Center, he asked his parents whether they had received any correspondence concerning his unemployment insurance claim. They indicated to him that they had not. That was the last time Mr. Zimmerline asked his parents whether they had received correspondence from Workforce Development. When Mr. Zimmerline contacted the Creston Workforce Development Center in February, the

Center staff had no update to provide Mr. Zimmerline. The Center staff provided Mr. Zimmerline with a toll free number he could use to contact the agency for further information.

A telephonic fact-finding interview took place on March 10, 2014. Workforce Development had mailed notice of that proceeding to Mr. Zimmerline at his address of record, his parents' home. Mr. Zimmerline indicates he did not have notice of that proceeding. Mr. Zimmerline did not ask his parents whether they had received such correspondence.

On March 11, 2014, Iowa Workforce Development mailed a copy of the March 11, 2014, reference 01, decision to Mr. Zimmerline's address of record, his parents' home. The decision disqualified Mr. Zimmerline for benefits based on a February 14, 2014 separation from Advance Services, Inc. Mr. Zimmerline indicates that he did not receive that correspondence. However, Mr. Zimmerline never asked his parents whether they had received additional correspondence from Workforce Development. The March 11, 2014, reference 01, decision carried on its face a warning that an appeal from the decision must be postmarked by March 21, 2014 or received by the Appeals Section by that date.

Mr. Zimmerline had used the toll free number provided by the Creston Workforce Development Center to regularly contact Workforce Development about his claim. By using that toll free number, Mr. Zimmerline received timely information that he had been disqualified for benefits based on a decision that had not been decided in his favor. Though Mr. Zimmerline asserts he received that information at the end of February or beginning of March 2014, the decision was not entered until March 10, 2014. The weight of the evidence indicates that Mr. Zimmerline learned about the decision as soon as it was entered. Mr. Zimmerline elected not to take further action on the matter at that time.

On April 27 or 28, 2014, Mr. Zimmerline visited with his grandmother and his grandmother asked the status of his unemployment insurance claim. Mr. Zimmerline represented to his grandmother that he had heard nothing about the status of his claim. Mr. Zimmerline did not tell his grandmother that he had learned in mid-March 2014 that a decision had been entered that disqualified him for benefits.

On April 29, 2014, Mr. Zimmerline's grandmother drove from Greenfield to the Creston Workforce Development Center, inquired about the status of Mr. Zimmerline's claim, learned of the adverse decision, and obtained an appeal form. Mr. Zimmerline's grandmother then completed the appeal form. The only thing Mr. Zimmerline contributed to the appeal form was his signature. On April 30, 2014, Mr. Zimmerline's grandmother drove back to the Creston Workforce Development Center to deliver the completed appeal form the Center staff. The Center staff documented on the form that it had been received by them on April 30, 2014. On May 1, 2014, the Creston Workforce Development Center staff faxed Mr. Zimmerline's appeal to the Appeals Section, which received the appeal that same day.

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 claims deputy'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 appeal in question was filed on April 30, 2014, when the completed appeal was delivered to the Creston Workforce Development Center.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the decision 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. The weight of the evidence indicates that any delay in the filing of the appeal was attributable to

Mr. Zimmerline and decisions he made. Mr. Zimmerline provided an address of record other than his own home, despite that fact that he had resided at the same location since August 2013. Mr. Zimmerline made no inquiry with his parents about correspondence from Workforce Development after his inquiry on or about February 20, 2014. The claimant has presented insufficient evidence to rebut the presumption that the March 11, 2014, reference 01, decision was mailed on March 11, 2014 or to rebut the presumption that it was received in a timely manner at the address of record Mr. Zimmerline had provided to Workforce Development. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). Mr. Zimmerline presented no testimony from his parents about correspondence from Workforce Development. Ms. Campbell's assertion that the parents did not receive the decision is insufficient to rebut the presumption that the decision was indeed mailed and received at the address of record in a timely manner. Ms. Campbell's assertion comes 10 weeks after the disqualification decision was mailed to the address of record. Ms. Campbell's earliest possible contact with the parents about that matter would have occurred seven weeks after the decision was mailed to the address of record.

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 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).

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).

Even if the administrative law judge were to conclude that Mr. Zimmerline had good cause for not filing an appeal by the March 21, 2014 deadline, that by no means would indicate good cause for waiting until April 30, 2014 to file an appeal from a decision Mr. Zimmerline learned about during the first half of March 2014. Mr. Zimmerline's grandmother's action on the appeal stand in stark contrast to Mr. Zimmerline's inaction during the seven preceding weeks. Ms. Campbell's actions reflect what a reasonable person would do once they learned of an adverse decision that they disagreed with. The evidence indicates that Mr. Zimmerline had actual notice of the adverse decision when it entered in March, but *elected* not to take further action on the matter until the end of April, when his grandmother, not he, took steps to file an appeal. Mr. Zimmerline's inaction cannot be attributed to lack of familiarity with the process. Mr. Zimmerline was sufficiently familiar with the process to apply for benefits online. Mr. Zimmerline was sufficiently familiar with the process to have gone to the Creston Workforce Development Center for assistance in February. Mr. Zimmerline was sufficiently familiar with the process to have utilized the toll free number on several occasions up until the time he learned of the adverse decision. Mr. Zimmerline's delay until the end of April in taking action on the adverse decision he had learned about in mid-March was unreasonable delay. Mr. Zimmerline's lax approach to the matter was further reflected in his failure to have with him at the time of the hearing, the Department Exhibit that had been sent to him on May 14, 2014 with a cover sheet that indicated the attached document was an exhibit and that he needed to have the exhibit with him at the time of the hearing. The evidence in the record does not establish good cause to treat the late appeal as a timely appeal.

DECISION:

The claims deputy's March 11, 2014, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision that disqualified the claimant for benefits remains in effect. In light of untimely appeal, no further hearing will be set to address the separation from the employment.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs