

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK M COHEN**  
Claimant

**APPEAL NO. 09A-UI-07140-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA WESTERN COMM COLL MERGED AREA  
XIII**  
Employer

**OC: 12/28/08**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(7) – Vacation Pay  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Patrick Cohen filed an appeal from the April 24, 2009, reference 02, decision that denied benefits for the week ending January 31, 2009 based on Mr. Cohen's receipt of vacation pay. After due notice was issued, a hearing was held by telephone conference call on June 3, 2009. Mr. Cohen participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 09A-UI-07139-JTT and 09A-UI-07141-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether there is good cause to deem Mr. Cohen's late appeal from the April 24, 2009, reference 02 decision timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 24, 2009, Workforce Development mailed a copy of the reference 01 decision to Patrick Cohen's last known address of record. The decision denied benefits for the four-week period ending January 24, 2009 based on Mr. Cohen's receipt of severance pay. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 4, 2009. Mr. Cohen received the decision in a timely manner, prior to the deadline for appeal.

On April 24, 2009, Workforce Development has also mailed a copy of the reference 02 decision to Mr. Cohen's last known address of record. That decision denied benefits for the week that ended January 31, 2009, based on Mr. Cohen's receipt of vacation pay. That decision also contained a warning that an appeal must be postmarked or received by the Appeals Section by May 4, 2009. Mr. Cohen received the decision in a timely manner, prior to the deadline for appeal.

On April 29, 2009, Workforce Development mailed a copy of the reference 03 decision to Mr. Cohen's last known address of record. That decision said that Mr. Cohen was overpaid

\$1,805.00 for the five-week period of December 25, 2008 and January 31, 2009. The April 29, 2009, reference 03 decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 9, 2009. The decision indicated that if the deadline for appeal fell on a Saturday, the deadline would be extended to the next working day. May 9, 2009, was a Saturday. The appeal deadline applicable to the reference 03 decision only was extended by operation of law to Monday, May 11, 2009.

On Friday, May 8, 2009, Mr. Cohen drafted an appeal letter. Mr. Cohen took his appeal to Office Depot so that it could be faxed to the Appeals Section. On Monday, May 11, 2009, Mr. Cohen's appeal letter was faxed to the Appeals Section and the Appeals Section received the appeal letter.

## **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 at issue in the present and related matters was filed on May 11, 2009, at the time the Appeals Section received the faxed appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the reference 01 and reference 02 decisions and the date this appeal was filed. The decisions were mailed on April 24, 2009 with a May 4, 2009 deadline for appeal. The appeal was not filed until a week after the appeal deadline for these two decisions had expired.

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 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 appeal in this case was not timely. The Agency representative's April 24, 2009, reference 02, decision is affirmed. The decision that denied benefits for the week ending January 31, 2009 based on Mr. Cohen's receipt of vacation pay 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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