

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L WEBER
Claimant

APPEAL NO. 16A-UI-10735-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/08/16
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Richard Weber filed an appeal from the August 23, 2016, reference 04, decision that denied benefits for the week that ended August 6, 2016, based on his weekly claim report that he was not able and available for work that week. After due notice was issued, a hearing was held on October 17, 2016. Mr. Weber participated. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-10736-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KFFV, the claims deputy's notes concerning the fact-finding interview set for August 18, 2016 at 1:15 p.m., the Request for Additional Information mailed on August 18, 2016,

ISSUE:

Whether the appeal from the August 23, 2016, reference 04, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 23, 2016, Iowa Workforce Development mailed a copy of the August 23, 2016, reference 04, decision to claimant Richard Weber at his last known address of record. The decision denied benefits for the week that ended August 6, 2016, based on his weekly claim report that he was not able and available for work that week. Mr. Weber received the decision in a timely manner, prior to the deadline for appeal. The decision stated that an appeal from the decision must be postmarked by September 2, 2016 or be received by the Appeals Section by that date. Mr. Weber did not take steps to appeal the decision by the September 2, 2016 appeal deadline.

On September 16, 2016, Iowa Workforce Development mailed a copy of the September 16, 2016, reference 05, decision to claimant Richard Weber at his last-known address of record. The decision stated that Mr. Weber had been overpaid \$431.00 for the week that ended

August 6, 2016, based on the August 23, 2016 decision that had denied benefits for that week. Mr. Weber received the decision in a timely manner, prior to the deadline for appeal. The decision stated that an appeal from the decision must be postmarked by September 26, 2016 or be received by the Appeals Section by that date. Mr. Weber did not take steps to appeal the decision by the September 26, 2016 appeal deadline.

On October 4, 2016, Mr. Weber went to a local Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the Center staff. The Appeals Bureau received the appeal that same day by fax.

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).

The evidence in the record establishes that more than ten calendar days elapsed between the August 23, 2016 mailing date and the date of the reference 04 decision and the filing of the appeal on October 4, 2016. 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. Weber did have a reasonable opportunity to file a timely appeal from the August 23, 2016, reference 04, decision that denied benefits for the week that ended August 6, 2016, but that he delayed filing the appeal until October 4, 2016. The 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). Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb lower 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 claimant's appeal for the August 23, 2016, reference 04, decision was untimely. The decision that denied benefits for the week that ended August 6, 2016, based on the weekly claim report that the claimant was not able and available for work that week, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs