

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDALL E FOULK**  
Claimant

**APPEAL NO. 14A-UI-01806-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RYDER INTEGRATED LOGISTICS INC**  
Employer

**OC: 01/05/14**  
**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:**

Randall Foulk filed an appeal from the December 19, 2013, reference 01, decision that disqualified him for benefits based on a November 20, 2013 discharge from Ryder Integrated Logistics, Inc. After due notice was issued, a hearing was held on March 4, 2014. Mr. Foulk participated. Jordan Vanersvelde represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-01807-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUES:**

Whether Mr. Foulk's appeal was timely. Whether there is good cause to deem the late appeal timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 16, 2013, Randall Foulk participated in a telephonic fact-finding interview the purpose of which was to discuss his November 2013 separation from employer Ryder Integrated Logistics, Inc. On December 19, 2013, Iowa Workforce Development mailed a copy of the December 19, 2013, reference 01, unemployment insurance decision to Mr. Foulk at his last known address of record. The decision was based on a December 23, 2012 original claim date. The decision disqualified Mr. Foulk for benefits based on a November 20, 2013 discharge from Ryder Integrated Logistics, Inc. Mr. Foulk received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked by December 29, 2013 or received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 29, 2013 was a Sunday and the next working day was Monday, December 30, 2013. Mr. Foulk elected not file an appeal from the December 19, 2013, reference 01, decision and did not file an appeal from that decision by the December 30, 2013 extended deadline.

Mr. Foulk subsequently established a new claim year that was effective January 5, 2014. On February 4, 2014, Iowa Workforce Development mailed a copy of the February 4, 2014, reference 01, decision to Mr. Foulk's last known address of record. The decision disqualified Mr. Foulk for unemployment insurance benefits in connection with the new benefit year based on an agency conclusion that a decision regarding Mr. Foulk's separation from Ryder Integrated Logistics, Inc., had been entered in connection with the prior claim year and that that disqualification decision continued to be in effect. The February 4, 2014, reference 01, decision was based on the January 5, 2014 original claim date. The February 4, 2014, reference 01, decision contained a February 14, 2014 deadline for appeal. Mr. Foulk mailed an appeal to the Appeals Section in response to the February 4, 2014, reference 01, decision. The envelope in which the appeal was mailed bears a February 14, 2014, afternoon postmark. Mr. Foulk drafted his appeal letter and placed it in the mail the same day it was postmarked.

#### **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). 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).

Mr. Foulk filed his appeal on February 14, 2014, the postmark date of the envelope in which the appeal was mailed.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the December 19, 2013, reference 01, 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. Mr. Foulk received the December 19, 2013, reference 01, decision on or about December 26, 2013 and at that point had four more days in which to file a timely appeal by the extended December 30, 2013 deadline.

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). Rather the late filing of the appeal was attributable to Mr. Foulk's decision not to file an appeal back in December 2013. Because the appeal from the December 19, 2013, reference 01, decision was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision that denied benefits. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The Claims Deputy's December 19, 2013, reference 01, decision is affirmed. The appeal from the December 19, 2013, reference 01, decision was not timely and that decision remains in effect. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs