

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JOE DUGGAN**

Claimant

**BSC AGENCY LLC**

Employer

**APPEAL NO. 20A-UI-06706-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**

**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 95.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Joe Duggan filed a late appeal from the May 27, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Mr. Duggan requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 28, 2020. Joe Duggan participated. Steve Duggan was also present in support of Joe Duggan. Becky Disney represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-06707-JTT. Exhibits A through E were received into evidence. The administrative law judge took official notice of the May 27, 2020, reference 01, decision and the May 27, 2020, reference 02, decision.

**ISSUE:**

Whether there is good cause to treat Joe Duggan's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 27, 2020, Iowa Workforce Development mailed two decisions to claimant Joe Duggan at his last-known address of record. The reference 01 decision denied benefits for the period beginning March 15, 2020, based on the deputy's conclusion that Mr. Duggan requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The reference 02 decision denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Duggan was not partially unemployed within the meaning of the law. Mr. Duggan is a student at the University of Iowa. At the time Mr. Duggan established his claim for benefits, he provided his parent's address as his address of record. Mr. Duggan's father, Steve Duggan, received the reference 01 and reference 02 decisions in a timely manner, on or before June 1, 2020. On June 1, 2020, Steve Duggan scanned both decisions and forwarded both decisions to Joe Duggan as email attachments. Steve Duggan included the front and back of the decisions in his email to Joe Duggan.

Joe Duggan received and reviewed the decisions on June 1, 2020. Each decision stated that an appeal from the decision must be postmarked by June 6, 2020 or be received by the Appeal Section by that date. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. June 6, 2020 was a Saturday. The next working day was Monday June 8, 2020. Each decision included clear and concise instructions for filing an appeal online, by fax, by email, and by mail. Joe Duggan noted the appeal deadline information when he reviewed the decisions on June 1, 2020.

Mr. Duggan elected to defer filing an appeal from the two decisions while he considered whether he should file an appeal from either decision and while he considered whether he should seek legal representation.

On June 1, 2020, Mr. Duggan sent an email message to the Iowa Workforce Development Benefits Bureau via the IWD-UI Claims Help email address. Mr. Duggan's message indicated that he needed to correct the date of birth associated with his claim. Mr. Duggan asserts that he had also sent messages to the IWD-UI Claims Help email address on June 1, 2020 indicating his receipt of the two decisions and stating why he should be eligible for benefits and not have to repay benefits. This second email from June 1, 2020 was unavailable at the time of the appeal hearing. On June 2, 2020 an Iowa Workforce Development representative responded to Mr. Duggan's request to update his birth date with instructions to re-submit the request to correct the date of birth along with proof of identity so that the date of birth could be updated. On June 2, 2020, Mr. Duggan resubmitted his request with proof of identity to the IWD-UI Claims Help email address. Mr. Duggan made no reference in the June 2 correspondence to a second email on June 1 or lack of response to said email. IWD promptly updated Mr. Duggan's date of birth in its records. On June 4, 2020, an Iowa Workforce Development representative sent an email response to Mr. Duggan indicating that the date of birth had been updated.

At 7:03 a.m. on June 8, 2020, Mr. Duggan sent a message to IWD via the IWD-UI Claims Help email address. Mr. Duggan indicated in his message that he had contacted IWD via telephone and had been directed to make contact via the IWD-UI Claims Help email address. Mr. Duggan explained in his message that he had received the two decisions and went on to explain why he should be eligible for unemployment insurance benefits and not be obligated to repay benefits. At 7:41 a.m. on June 8, 2020, an IWD representative responded to Mr. Duggan's message and opened with the following: "Initially, I hope that you filed an appeal in a timely manner in order to keep your argument alive. Please file an appeal if you haven't." Mr. Duggan did not heed the IWD representative's advice. Instead, Mr. Duggan further delayed filing his appeal.

On June 10, 2020, Mr. Duggan sent an email message to his father indicating that he thought it was worth filing an appeal and securing the assistance of a particular law firm.

On June 22, 2020, Mr. Duggan completed and transmitted an online appeal to the Appeals Bureau via the IWD website. The appeal indicated it was an appeal from the reference 01 decision. The Appeals Bureau received the appeal on June 22, 2020 and treated the appeal from the reference 01 decision as also an appeal from the reference 02 decision.

## **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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b). No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

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).

An initial question in this case is whether Mr. Duggan 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. Duggan did have a reasonable opportunity to file a timely appeal. He received the decisions on June 1, 2020. The decisions included clear and concise instructions for filing an appeal. At the time, he received the decisions, he had a full week in which to file an appeal by the extended, June 8, 2020 appeal deadline. On the morning of June 8, 2020, an IWD representative specifically advised Mr. Duggan to file his appeal if he had not already done so. Mr. Duggan's June 8, 2020 email to the IWD-UI Claims inbox did not constitute an appeal. Mr. Duggan understood this at all relevant times, including on the morning of June 8, when the agency representative specifically advised him he needed to get an appeal filed, if he had not already done so. At the time Mr. Duggan received that sound advice, he still had until 11:59 p.m. on June 8, 2020 to transmit an appeal, but did not take that opportunity.

The evidence in the record establishes an untimely appeal. The appeal was filed on June 22, 2020, 14 days after the extended appeal deadline, when the Appeals Bureau received the electronic appeal that was created and transmitted on June 22, 2020. Neither Iowa Workforce Development nor the United States Postal Service caused the appeal to be late. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the decision from which Mr. Duggan appeals. 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 from the May 27, 2020, reference 01, decision was untimely. The decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work, shall stand.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you may have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

August 5, 2020  
Decision Dated and Mailed

jet/sam