

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABDELAZIZ H ELSAFI
Claimant

APPEAL NO. 12A-UI-06877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNA ENTERPRISES
STAFFING SOLUTIONS**
Employer

**OC: 02/26/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Abdelaziz Elsafi appealed from an unemployment insurance decision dated April 4, 2012, reference 01, that denied benefits in connection with a November 22, 2011 separation from Anna Enterprises/Staffing Solutions. A telephone hearing was scheduled for July 5, 2012. Mr. Elsafi participated. Bill Van Sloun represented the employer. Arabic-English interpreter Magdy Salama assisted with the hearing. The hearing in this case was consolidated with a hearing in Appeal Number 12A-UI-06878-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

Whether Mr. Elsafi's appeal from the April 4, 2012, reference 01 disqualification decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 4, 2012, Iowa Workforce Development mailed a copy of the April 4, 2012, reference 01, decision to Abdelaziz Elsafi's last-known address of record. The decision disqualified Mr. Elsafi unemployment insurance benefits in connection with a November 22, 2011 separation from employment with Anna Enterprises/Staffing Solutions. Mr. Elsafi received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 14, 2012. Mr. Elsafi did not take any steps to file an appeal from the disqualification decision when he received it.

On May 31, 2012, Iowa Workforce Development mailed a copy of the May 31, 2012, reference 02 overpayment decision to Mr. Elsafi. That decision said that Mr. Elsafi was overpaid \$4,340.91 in unemployment insurance benefits. In response to the overpayment decision, on June 5, 2012, Mr. Elsafi went to the Des Moines Workforce Development Center, completed an appeal form, and delivered the completed form to the Workforce Development staff. The Appeals Section received the appeal on June 12, 2012. The Appeals Section treated

the appeal as also an appeal from the April 4, 2012, reference 01 decision that had triggered the later overpayment 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, 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 appeal at issue was filed on June 5, 2012, when Mr. Elsafi delivered the appeal to the Workforce Development Center staff.

The evidence in the record establishes that more than ten calendar days elapsed between the day the April 4, 2012, reference 01 decision was mailed to Mr. Elsafi and June 5, when he filed his appeal. Indeed, the appeal was filed two months after the April 4, 2012, reference 01, decision was mailed to Mr. Elsafi and more than an month and a half after the appeal from the April 4 decision was due.

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. Elsafi likely received the April 4, 2012 decision on that same day or the next. Mr. Elsafi demonstrated at the start of the hearing, as the Appeals Staff was obtaining an interpreter, that he has substantial English skills. Mr. Elsafi further demonstrated his ability to take timely an appropriate action in response to an adverse decision through his timely response to the overpayment decision.

The administrative law judge concludes that failure to file a timely appeal from the April 4, 2012, reference 01 disqualification 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).

DECISION:

The Agency representative's April 4, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative, which disqualified Mr. Elsafi for benefits in connection with a November 22, 2011 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css