

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOLBY D YOUNG

Claimant

APPEAL NO. 12A-UI-02669-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 01/15/12

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jacolby Young filed an appeal from the February 21, 2012, reference 01, decision that denied benefits in connection with a September 17, 2011 separation from Remedy Intelligent Staffing, Inc. After due notice was issued, a hearing was held on April 2, 2012. Mr. Young participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Young's appeal was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 21, 2012, Iowa Workforce Development mailed a copy of the February 21, 2012, reference 01, decision to Jacolby Young's last-known address of record. Mr. Young 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 March 2, 2012. When Mr. Young received the decision that disqualified him for benefits, he prepared an appeal and mailed it. Mr. Young wrote his own address as the address to which the appeal should be directed in center of the envelope and put Iowa Workforce Development's address as the return address in the upper left hand corner of the envelope. The Post Office delivered the appeal to Mr. Young's residence, not Iowa Workforce Development. On March 15, 2012, Mr. Young's sister re-mailed the appeal after writing the appropriate address for Iowa Workforce Development in the appropriate place on the envelope. The appeal received by Iowa Workforce Development bears a March 15, 2012 Chicago postmark.

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 in this case was filed on March 15, 2012, the date of the postmark on the envelope.

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). 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 Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Instead, the lateness of the appeal was attributable to Mr. Young's errors in placing the appropriate addresses on the envelope and additional delay between the time the misdirected mail was received back at his residence and the date when his sister re-mailed the appeal on his behalf. The appeal was filed 13 days after the deadline. The administrative law judge 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 February 21, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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