

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**HARALD C DEVOOGD JR
702 L AVE
BOONE IA 50036**

**MAJORS CONCRETE COMPANY
428 STORY ST
BOONE IA 50036**

**Appeal Number: 06A-UI-01944-JTT
OC: 12/19/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant Harold Devoogd filed an appeal from the November 3, 2005, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 7, 2006. Claimant participated. Owner Kevin Majors represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The November 3, 2005, reference 04, decision was mailed to Harold Devoogd's last known address of record on November 3, 2005. That address was 702 L Avenue, Boone, IA 50036. Mr. Devoogd resided at that address at that time. Mr. Devoogd does not recall receiving a copy

of the November 3, 2005, reference 04, decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 13, 2005.

On November 5, 2005, Mr. Devoogd contacted the Boone Workforce Development Center and spoke with Representative Helen Bergman. Ms. Bergman reviewed the appropriate workforce development records regarding the status of the claim and shared this information with Mr. Devoogd. Ms. Bergman advised Mr. Devoogd of the decision denying benefits. Based on the fact that Mr. Devoogd's benefit year was about to end on December 18, 2005, Mr. Devoogd elected not to take any further action in connection with the claim. Mr. Devoogd subsequently established a claim for benefits in the new benefit year which claim was effective January 1, 2006. On January 17, 2006, an Agency representative entered the reference 01 decision regarding the new claim. That decision denied benefits and indicated that the prior decision denying benefits remained in effect.

Mr. Devoogd's appeal was filed in response to the second denial of benefits. The appeal bears a completion date of January 26, 2006. The appeal does not indicate on its face the day that Mr. Devoogd delivered the appeal to the Boone Workforce Development Center. On February 15, 2006, the Workforce Development Center transmitted the appeal by fax to the Unemployment Insurance Service Center in Des Moines, which in turn forwarded the appeal to the Appeals Section. The Appeals Section received the appeal on February 16, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Devoogd's late appeal should be deemed timely. It does not.

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 on the date the decision is mailed. The "decision date" found in the upper right-hand portion of the 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). Any decision mailed by the Unemployment Insurance Division is considered as having been given to the addressee to whom it is directed on the date of the document, unless otherwise indicated by the facts. 871 IAC 24.35(3).

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 is 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). An appeal submitted by any means other than mail is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. 871 IAC 24.35(1)(b). The submission of an appeal beyond the statutory or regulatory deadline will be considered timely if the evidence establishes that the delay in submission was due to Agency error or misinformation or to delay or other action of the United States postal services. 871 IAC 24.35(2).

The administrative law judge found not credible the claimant's testimony that when he spoke with the Boone Workforce Development representative on November 5, 2005, that she was unable to provide information regarding the status of the claim. The November 3, 2005 referenced 04, decision had been entered into the agency's database on November 2 or 3 and this information would have been readily available to the Boone Workforce Development representative. The administrative law judge concludes that Mr. Devoogd had actual timely notice of the decision denying benefits and failed to file an appeal by the statutory deadline.

No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c). Mr. Devoogd's almost two month delay in filing the appeal once he had notice of the decision denying benefits was unreasonable.

The appeal was untimely and, therefore, 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 November 3, 2005, reference 04, decision is affirmed. The appeal in this case was untimely. The decision denying benefits remains in effect.

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