

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDI M HANNAMAN**  
Claimant

**APPEAL NO. 11A-UI-12439-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 08/14/11  
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:**

Brandi Hannaman filed an appeal from the September 7, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 12, 2011. Ms. Hannaman participated and presented additional testimony through Michael Hannaman. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether there is good cause to treat Ms. Hannaman'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 September 7, 2011, Iowa Workforce Development mailed a copy of the September 7, 2011, reference 01, decision to Brandi Hannaman's last-known address of record. Ms. Hannaman received the decision on or about September 10, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 17, 2011. 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. September 17, 2011 was a Saturday and the next working day was Monday, September 19, 2011. Ms. Hannaman was dealing with some health issues and did not immediately prepare an appeal. Ms. Hannaman downloaded an appeal from the Agency's website. Four or five days later, Ms. Hannaman and her husband typed an appeal letter. Ms. Hannaman signed and dated the appeal form on September 19, 2011. On September 20, 2011, Ms. Hannaman's husband attempted to deliver the appeal to the Dubuque Workforce Development Center, but did so after normal business hours. On September 21, Mr. Hannaman delivered the completed appeal to the Dubuque Workforce Development Center staff, who faxed the appeal to the Appeals Section. The Appeals Section received Ms. Hannaman's appeal on September 21, 2011.

## 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 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. Ms. Hannaman prepared a much more detailed written statement, two-pages single-spaced and typed, than was necessary to effect an appeal. Ms. Hannaman had downloaded the appeal form days earlier and only needed to sign the form and get it in the mail, fax it, or deliver it to Workforce Development by the deadline. Ms. Hannaman had nine days from the time she received the decision to the effective appeal deadline. This was ample time to request assistance, if she needed it, in preparing an appeal. The weight of evidence indicates that the appeal was fully drafted and ready to go on the September 19 deadline date, but not actually filed until two days later, when Mr. Hannaman delivered the appeal to Iowa Workforce Development. At the time of Mr. Hannaman's initial, after-hours attempt to deliver the appeal to Workforce Development, the appeal deadline had already passed.

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 Agency 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 September 7, 2011, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs