

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DANIEL R THOMPSON**  
Claimant

**APPEAL NO. 20A-UI-03370-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/15/20**  
**Claimant: Appellant (1/R)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(4) – Minimum Earnings Requirement for Second Benefit Year

**STATEMENT OF THE CASE:**

Daniel Thompson filed an appeal from an unrelated decision that the Appeals Bureau staff erroneously treated as also a late appeal from the March 25, 2020, reference 01, decision that denied benefits in connection with a second benefit year, based on the deputy's conclusion that Mr. Thompson had not earned eight times the previous claim year weekly benefit subsequent to filing the previous year claim and before establishing the second claim year that was effective March 15, 2020. After due notice was issued, a hearing was held on May 13, 2020. Mr. Thompson participated. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, DBRO, WAGE-A, and the March 25, 2020, reference 01, decision.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Thompson established a second benefit year that was effective March 15, 2020. On March 25, 2020, Iowa Workforce Development mailed the March 25, 2020, reference 01, decision to Mr. Thompson's last-known address of record. The decision denied benefits in connection with a second benefit year, based on the deputy's conclusion that Mr. Thompson had not earned eight times the previous claim year weekly benefit subsequent to filing the previous year claim that was effective March 10, 2019 and before establishing the second claim year that was effective March 15, 2020. According to Workforce Development records, Mr. Thompson did not draw benefits during the March 10, 2019 benefit year. Mr. Thompson received the March 25, 2020, reference 01, decision in a timely manner, prior to the deadline for appeal. The decision indicated that an appeal from the decision must be postmarked by April 4, 2020 or be received by the Appeal Section by that date. Mr. Thompson did not file an appeal from the decision by the April 4, 2020 appeal deadline.

On April 22, 2020, Mr. Thompson filed an online appeal in an unrelated matter. The appeal on its face indicated that it was in reference to a March 16, 2020, reference 04, decision and about Mr. Thompson missing an appeal hearing in reference to that matter that concerned his separation from Walmart. The Appeals Bureau received this online appeal correspondence on April 22, 2020, forwarded a copy of the appeal the Employment Appeal Board and erroneously treated the appeal correspondence as also a late appeal from the wholly unrelated March 25, 2020, reference 01, decision regarding the second benefit year minimum earnings requirement.

At the time the deputy entered the March 25, 2020, reference 01, decision regarding the second benefit year minimum earnings requirement, Iowa Workforce Development had not yet received the quarter wage report for the first quarter of 2020 that showed the claimant had earned and been paid substantial wages during the first quarter of 2020.

### **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).

Mr. Thompson's erroneously docketed electronically-transmitted appeal was filed on April 22, 2020, when the Appeals Bureau received it.

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 an appeal from the March 25, 2020, reference 01, decision by the April 4, 2020 appeal deadline, but failed to do so for personal reasons. The late filing of the appeal was not due to Iowa Workforce Development or the United States Postal Service. 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 from the March 25, 2020, reference 01, decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Accordingly, the March 25, 2020, reference 01, decision that denied benefits in connection with a second benefit year based on the eight-times-weekly benefit amount minimum earnings requirement remains in effect.

This matter will be remanded to the Benefits Bureau for reconsideration of whether the claimant was subject to the Iowa Code section 96.4(4)(c) eight-times-weekly-benefit-amount minimum earnings requirement in light of the fact that he did not draw benefits during the benefit year that started March 10, 2019. If the Benefits Bureau determines that claimant is subject to that requirement, the Benefits Bureau should also reconsider whether and when the claimant met that minimum earnings requirement in light of the wages Walmart reported as wages paid to the claimant during the first quarter of 2020.

#### **DECISION:**

The claimant's appeal from the March 25, 2020, reference 01, decision was untimely. Based on the untimely appeal, the administrative law judge lacks jurisdiction to disturb the decision. Accordingly, the March 25, 2020, reference 01, decision that denied benefits in connection with a second benefit year based on the eight-times-weekly benefit amount minimum earnings requirement remains in effect.

This matter is remanded to the Benefits Bureau for reconsideration of whether the claimant was subject to the Iowa Code section 96.4(4)(c) eight-times-weekly-benefit-amount minimum

earnings requirement in light of the fact that he did not draw benefits during the benefit year that started March 10, 2019. If the Benefits Bureau determines that claimant is subject to that requirement, the Benefits Bureau shall also reconsider whether and when the claimant met that minimum earnings requirement in light of the wages Walmart reported as wages paid to the claimant during the first quarter of 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light gray rectangular background.

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James E. Timberland  
Administrative Law Judge

May 18, 2020  
Decision Dated and Mailed

jet/scn