

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID HAMMETT
Claimant

YRC INC
Employer

APPEAL NO. 20A-UI-11518-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1)(F) – Return to Work After Absence Due to Compelling Reasons

STATEMENT OF THE CASE:

The employer filed a late appeal from the April 29, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant left work on March 25, 2020 for compelling personal reasons for not more than 10 days unless approved by the employer, attempted to return to work immediately after the compelling circumstances ended, but that no work was available. After due notice was issued, a hearing was held on November 12, 2020. Claimant David Hammett participated. Jennifer Porter represented the employer and presented additional testimony through Ava Niazi. The administrative law judge took official notice of the April 29, 2020, reference 01, decision and received Exhibit 1 into evidence.

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: On April 29, 2020, Iowa Workforce Development mailed the April 29, 2020, reference 01, decision to the employer's address of record. The decision allowed benefits to the claimant, provided he met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant left work on March 25, 2020 for compelling personal reasons for not more than 10 days unless approved by the employer, attempted to return to work immediately after the compelling circumstances ended, but that no work was available. The decision stated that the decision would become final unless an appeal was postmarked by May 9, 2020 or received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 9, 2020 was a Saturday and the next working day was Monday, May 11, 2020. The employer's representative of record has at all relevant times been Thomas & Company, formerly known as Thomas & Thorngren. The employer's address of record has at all relevant times been a United States Postal Service post office box

assigned to Thomas & Company. The weight of the evidence establishes that the decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. There is no evidence to suggest otherwise. The employer's agent did not take any steps to file an appeal by the extended May 11, 2020 appeal deadline. On September 2, 2020, a Thomas & Company representative sent an email to the employer soliciting a decision regarding whether the employer wished to pursue a late appeal. On September 16, 2020, the employer routed the correspondence to Jennifer Porter, Operations Manager. On September 17, 2020, Ms. Porter notified Thomas & Company that the employer wished to proceed with the late appeal. On September 17, 2020, Thomas & Company faxed an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on September 17, 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).

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). One 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 evidence in the record establishes an untimely appeal. The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The weight of the evidence establishes that the decision was delivered to the employer's address of record in a timely manner, prior to the deadline for appeal. The employer presented no evidence to establish otherwise. The decision included the appeal instructions. The appeal process is by design a streamlined process that can be accomplished in minimal time and with minimal effort. The employer's agent and representative of record took no steps to file an appeal by the May 11, 2020 extended appeal deadline. Instead, the employer and the employer's agent unreasonably delayed filing an appeal until September 17, 2020, more than four months after the appeal deadline. At the point where the appeal was unreasonably delayed by almost four months beyond the appeal deadline, the employer representative contacted the employer about the matter on September 2, 2020. The employer then unreasonably delayed responding to its representative to September 16, 2020. By that time the appeal was more than four months late. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). There is not good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the April 29, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The employer's appeal was untimely. The April 29, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant's separation was for good cause attributable to the employer, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

November 19, 2020
Decision Dated and Mailed

jet/scn