

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD P NEELEY**  
Claimant

**APPEAL NO: 10A-UI-01526-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMCO ENTERPRISES INC**  
Employer

**OC: 01/04/09**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated May 21, 2009, reference 02, that held he was not eligible for benefits for a two-week period ending May 9, 2009, because he was not able and available for work due to injury. A telephone hearing was held on March 9, 2010. The claimant participated. Tom Kuiper, Representative, and Mary Halverson, Senior HR Generalist, participated for the employer. Claimant Exhibit A was received as evidence. The parties waived notice on the correct issue in this matter, able and available for work.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant received the department decision issued May 21, 2009 with an appeal deadline date of May 31, but he did not file an appeal until he submitted a form to a department representative on January 26, 2010. The claimant submitted an appeal, because the department representative told him he was not eligible for benefits.

The department had issued a separate decision on or about May 21, 2009 reference 03 that held the claimant was eligible for benefits by reason of his voluntary quitting of employment at EMCO on April 21, 2009, because he had sufficient wage credits earned from other base period employers. The employer was relieved of liability on this claim. The claimant and employer did not appeal this decision.

More recently, the claimant filed for extended benefits (EUC) effective January 17, 2010, and the department record shows no disqualifying issue.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The ten calendar days for appeal begins running on the mailing date. 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant filed an appeal, because he believed the department representative that he needed to do so in order to be eligible for benefits. The current department record shows he is eligible and neither department decision involving the employer in this case disqualifies him. Since the claimant put down references on his appeal form to being off work due to injury, Unemployment Appeals believes this is the decision he is appealing from in this matter.

The claimant agrees that he was not able to work for the two weeks ending May 9, 2009, and did not intend to appeal this decision or the other favorable decision on his separation from employment. The claimant's appeal is untimely, and he offered no good cause for the seven months he delayed his appeal.

**DECISION:**

The department decision dated May 21, 2010, reference 02, is affirmed. The claimant failed to file a timely appeal. The claimant was not able and available for work, and he is ineligible for benefits for the two weeks ending May 9, 2009.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs