

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOM D PETET**  
Claimant

**APPEAL NO. 09A-UI-05584-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROBERT HALF CORPORATION**  
Employer

**OC: 05/04/08**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tom Petet filed an appeal from the November 4, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 6, 2009. Mr. Petet participated. Mark Hammond represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-05585-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether there is good cause to deem the claimant's late appeal from the November 4, 2008, reference 02, decision timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 4, 2008, Workforce Development mailed a copy of the reference 02 decision denying benefits to Tom Petet's last-known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 14, 2008. The weight of evidence indicates that Mr. Petet received the decision in a timely manner, prior to the deadline for appeal. At some point in November 2008, Mr. Petet went to the Des Moines Workforce Development Center and spoke to a Workforce Development representative. Mr. Petet does not remember the name of the representative or the representative's position with Workforce Development. Mr. Petet remembers that the representative was an African-American female. Mr. Petet discussed with the Workforce Development representative the disqualification decision he had received. Mr. Petet concluded from the discussion that any appeal would be futile. The Workforce Development representative did not advise Mr. Petet that he should not or could not file an appeal. Mr. Petet did not take any steps to file an appeal at that time.

On March 3, 2009, Workforce Development mailed a copy of the reference 03 overpayment decision to Mr. Petet's last known address of record. The decision specifically referenced that the overpayment decision was based the disqualification decision referenced above. The

March 3, 2009, overpayment decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 13, 2009. Mr. Petet received the overpayment decision in a timely manner, prior to the deadline for appeal.

On or about April 7, 2009, Mr. Petet drafted an appeal letter. Mr. Petet submitted his appeal letter by mail. The postmark of the envelope in which the appeal arrived bears an April 7, 2009 postmark. The Appeals Section received Mr. Petet's appeal on April 8, 2009.

## **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). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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 appeal in this matter was filed on April 7, 2009, the date of the postmark.

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 weight of the evidence in the record establishes that Mr. Petet had a reasonable opportunity to file a timely appeal from the November 4, 2008 decision. The administrative law judge finds not credible Mr. Petet's assertion a Workforce Development representative told him that any appeal would be futile or otherwise dissuaded Mr. Petet from filing an appeal. Mr. Petet's inability to remember whether he participated in the November 3, 2008 fact-finding interview—in light of clear indication in the administrative file that he did participate—calls into question Mr. Petet's ability to accurately recall other contact with the Agency during same general period. The weight of the evidence indicates that Mr. Petet did not file an appeal of the November 4, 2008 disqualification decision until five months after the disqualifying decision was entered.

Mr. Petet's response to the March 3, 2009, reference 03, overpayment decision must also be considered. Mr. Petet received that decision in a timely manner and had a reasonable opportunity to appeal by the March 13, 2009 appeal deadline. The overpayment decision specifically referenced the prior disqualification decision as the basis for the overpayment decision. Mr. Petet still delayed until April 6, 2009—23 days beyond the appeal deadline—to appeal either decision.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c). The administrative law judge finds Mr. Petet's delay in filing an appeal from the November 4, 2008, reference 02 ,decision unreasonable.

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 November 4, 2008, reference 02, 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

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