

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JENNIFER A GILLOGLY
730 MELROSE CTR
CLINTON IA 52732**

**MERCY MEDICAL CENTER – CLINTON INC
C/o HUMAN RESOURCES
1410 N 4TH ST
CLINTON IA 52732**

**Appeal Number: 04A-UI-07549-RT
OC: 06/13/04 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The employer, Mercy Medical Center-Clinton, Inc., filed an appeal from an unemployment insurance decision dated June 30, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Jennifer A. Gillogly. After due notice was issued, a telephone hearing was held on August 4, 2004, with the claimant participating. Diane Grantz, Director of Human Resources; Connie Gonzales, Director of Nutritional Services; and Elsie Foster, Nutrition Supervisor participated in the hearing for the employer. Department Exhibit One and Claimant's Exhibit A were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on June 30, 2004, reference 01, determining that the claimant was eligible to receive unemployment insurance benefits as long as she meets all other eligibility requirements. The employer's account may be charged because records indicate the claimant resigned on June 14, 2004 but was forced to do so or be discharged and her quitting was not caused by her employer. That decision was sent to the employer on the same day, June 30, 2004 and received by the employer prior to the deadline for the appeal. That decision indicated that an appeal had to be postmarked or otherwise received by the Appeal Section by July 12, 2004 (the decision actually said July 10, 2004, but because that was a Saturday, the appeal would be due the next business or working day). However, as shown by the employer's appeal at Department Exhibit One, the employer faxed its appeal to the Appeals Section on July 13, 2004, one day late. The appeal is dated July 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely appeal or, if not, whether the employer demonstrated good cause for such failure. The administrative law judge concludes that the employer's appeal was not timely and that the employer has not demonstrated good cause for the delay in the filing of its appeal, and as a consequence, the appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from the employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach that issue.

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 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 that the employer has the burden to prove that its appeal was timely or that it had good cause for delay in the filing of its appeal. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence either that its appeal was timely or that it had good cause for a delay in the filing of its appeal. On its face as shown at Department Exhibit One, the employer's appeal is not timely. The employer's witness, Diane Grantz, testified that she did receive the decision dated June 30, 2004, reference 01, from which the employer seeks to appeal, but could not testify as to when. Ms. Grantz testified that she actually prepared the appeal and signed it on Sunday, July 11, 2004. She dated the appeal July 12, 2004 because she anticipated faxing it on that day. The administrative law judge is most uncomfortable in signing or executing a formal and important document such as an appeal on a date other than the date that it was actually prepared and signed. Ms. Grantz had no real explanation as to why she just didn't fax it on July 11, 2004 when she had completed and signed it. The Appeals Section fax runs 24 hours per day 7 days a week. Ms. Grantz also had no reasonable explanation as to why she didn't simply place the appeal in an envelope, stamp it, address it, and put it in the mail. If the envelope had been postmarked July 12, 2004,

and it should have been if it was mailed on July 11, 2004, the employer's appeal would have been timely. In fact, if the appeal would have been faxed on July 12, 2004, it would have been timely. Ms. Grantz testified that she didn't fax it on July 12, 2004 because she was not at work because she was ill. However, Ms. Grantz also testified that there were others in the office that could have faxed the document to the Appeals Section on July 12, 2004 but she did not ask them to do so. There are too many inconsistencies in this matter to determine that the employer has demonstrated good cause for delay in the filing of its appeal. It is true that the appeal is only one day late, but the appeal here is jurisdictional which actually goes directly to the authority of the administrative law judge to decide other issues. There is no evidence that the employer's delay was as a result of any error or mistake on the part of the U.S. Postal Service or Iowa Workforce Development. Accordingly, the administrative law judge concludes that the employer's attempted appeal of a decision dated June 30, 2004, reference 01, is not timely and the employer has not demonstrated good cause for the delay in the filing of its appeal. Therefore, the administrative law judge concludes that the appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issues presented. The administrative law judge finally concludes that the representative's decision of June 30, 2004, reference 01, should remain in full force and effect.

DECISION:

The representative's decision dated June 30, 2004, reference 01, is to remain in full force and effect. The claimant, Jennifer A. Gillogly, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. The employer's attempted appeal is not timely and the employer has not demonstrated good cause for its delay.

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