

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHELBY L THOMPSON
Claimant

APPEAL NO: 18A-UI-04949-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 03/25/18
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Shelby Thompson filed an appeal from the April 12, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Thompson was discharged on March 21, 2018 for excessive unexcused absences. After due notice was issued, a hearing was held on May 16, 2018. Mr. Thompson participated. The employer registered a telephone number for the hearing, but did not participate in the hearing. At the time of the hearing, the employer representative, Chelsea Cornelius, was not available at the number the employer registered for the hearing. Exhibit A and Department Exhibit D-1 were received 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 12, 2018, Iowa Workforce Development mailed the April 12, 2018, reference 01, decision to claimant Shelby Thompson at his last known address of record. The decision disqualified Mr. Thompson for unemployment insurance benefits and relieved the employer account of Swift Pork Company of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Thompson was discharged on March 21, 2018 for excessive unexcused absences. The April 12, 2018, reference 01, decision stated that an appeal from the decision must be postmarked by April 22, 2018 or be received by the Appeal Section by that date. The decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. April 22, 2018 was a Sunday and the next working day was Monday, April 23, 2018. Mr. Thompson received the April 12, 2018, reference 01, decision in a timely manner, most likely within a couple days of the April 12, 2018 mailing date. The decision included a toll-free customer service number Mr. Thompson could call if he had questions about the decision. The back side of the decision contained clear and

concise instructions for filing an appeal and a reminder that the appeal was due within 10 days of the mailing date of the decision.

On the same day Mr. Thompson received the April 12, 2018, reference 01, decision mentioned above, he received also received a second decision. That second decision was the April 12, 2018, reference 02 decision. The reference 02 decision concerned Mr. Thompson's earlier separation from a different employer, Manpower. The reference 02 decision allowed benefits to Mr. Thompson, *provided he met all other eligibility requirements*.

Mr. Thompson erroneously assumed that the decision regarding the Manpower separation made it unnecessary for him to file an appeal from the April 12, 2018, reference 01, decision regarding his later separation from Swift Pork Company. Mr. Thompson did not take steps to file an appeal from the April 12, 2018, reference 01, decision by the extended April 23, 2018 appeal deadline.

On April 27, 2018, Mr. Thompson realized that he was not receiving unemployment insurance benefits. On that day, Mr. Thompson went to the Ottumwa Workforce Development and spoke with a Workforce Advisor. In connection with that contact, Mr. Thompson completed an appeal form to file an appeal from the April 12, 2018, reference 01, decision. Mr. Thompson delivered the completed appeal form to the Workforce Advisor, who emailed the appeal form to the Appeals Bureau. The Appeals Bureau received the appeal on April 27, 2018.

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 appeal from the April 12, 2018, reference 01, decision was filed on April 27, 2018.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the April 12, 2018, reference 01, decision and the date Mr. Thompson filed his appeal from that decision. 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 evidence in the record establishes an untimely appeal. Mr. Thompson had a reasonable opportunity to file an appeal from the April 12, 2018, reference 01, decision by the extended April 23, 2018 appeal deadline. Mr. Thompson received the decision on or about April 14, 2018. Mr. Thompson took no steps to file an appeal from the decision until after the appeal deadline had passed. 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 and not due to delay or other action of 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 was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision that disqualified Mr. Thompson for unemployment insurance benefits. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The April 12, 2018, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on March 21, 2018 for excessive unexcused absenteeism, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs