

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA D GLADE
Claimant

APPEAL NO. 16A-UI-08800-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/02/15
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Angela Glade filed an appeal from the July 7, 2016, reference 06, decision that denied benefits for the week of May 15-21, 2016, based on an agency conclusion that she was not able and available for work that week. After due notice was issued, a hearing was held on August 30, 2016. Ms. Glade participated. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-08801-JTT. Exhibits A through D and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBIN, DBRO, OVPY and KCCO.

ISSUE:

Whether there is good cause to treat Ms. Glade's appeal from the July 7, 2016, reference 06, decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 7, 2016, Iowa Workforce Development mailed the reference 06 decision to Ms. Glade that denied benefits for the week that ended May 21, 2016, based on an agency conclusion that Ms. Glade did not meet the able and available requirement during that week. The decision stated that an appeal from the decision must be postmarked by July 17, 2016 or be received by the Appeals Section by that date. There is no reason to believe that the July 7, 2016, reference 06, decision did not arrive at the address of record in a timely manner, prior to the deadline for appeal.

On July 7, 2016, Ms. Glade's address of record on file with Iowa Workforce Development was 609 West Sunset Road in Jefferson. That address belongs to Ms. Glade's parents. Ms. Glade used that address while she was staying with her parents. At the end of June or beginning of July, Ms. Glade actually resided at 1402 Bryn Mawr Boulevard in Atlantic. Ms. Glade had not updated her address of record with Workforce Development when she moved and had not completed a request to have the United States Postal Service forward her mail to the Atlantic address. Ms. Glade had relocated to the Atlantic address after a disagreement with her

parents. Ms. Glade did not maintain contact with her parents subsequent to her move, even to see whether they had received important mail for her at their address. Ms. Glade did not update her address of record with Iowa Workforce Development until July 31, 2016.

On August 3, 2016, Iowa Workforce Development mailed a reference 07, decision to Ms. Glade at the updated address of record in Atlantic. The decision stated that Ms. Glade had been overpaid \$488.00 in benefits for the week that ended May 31, 2016, due to the earlier decision that held she did not meet the able and available requirement for that week. The overpayment decision contained an August 13, 2016 appeal deadline. On August 11, 2016, Ms. Glade filed an online appeal from the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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). 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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The weight of the evidence establishes that the reference 06 decision was received at the address of record in a timely manner. The address of record was the address that Ms. Glade had provided to Workforce Development as the address the agency should use when communicating with her. Ms. Glade moved without taking timely and reasonable steps to update her address of record with Workforce Development. Ms. Glade moved without taking timely and reasonable steps to have the post office forward her mail to her new address. Ms. Glade moved without maintaining contact with her parents at the address of record Ms. Glade had provided to Workforce Development. Ms. Glade did not maintain contact with her parents even for the purpose of checking in to see whether he she had received any important mail. In light of these circumstances arising from decisions made by Ms. Glade, the administrative law judge cannot find Ms. Glade to have been denied a reasonable opportunity to file a timely appeal from the July 7, 2016, reference 07, decision. The failure to file a timely appeal of the July 7, 2016, reference 06, decision within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 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. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The July 7, 2016, reference 06, decision is affirmed. The claimant's appeal was untimely. The decision that denied benefits for the week that ended May 21, 2016, based on an able and available disqualification, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs