

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STEVE G THOMAS**

Claimant

**RED OAK COMMUNITY SCHOOL DISTRICT**

Employer

**APPEAL NO. 22A-UI-07054-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**

**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On March 11, 2022, Steve Thomas (claimant) filed a late appeal from the March 4, 2021 (reference 01) decision that denied benefits for the period beginning April 26, 2020, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and was not partially unemployed. After due notice was issued, a hearing was held on May 5, 2022. Claimant participated. Deb Drey represented the employer. There were five appeal numbers set for a consolidated hearing: 22A-UI-07054-JT-T, 22A-UI-07055-JT-T and 22A-UI-07057-JT-T, 22A-UI-07060-JT-T and 22A-UI-07061-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, KCCO, KFFV, WAGE-A, WAGE-B, and the reference 01, 02 and 03 decisions. The administrative law judge also took official notice that there was no application for Pandemic Unemployment Assistance (PUA) and no decision entered regarding PUA.

**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 March 4, 2021, Iowa Workforce Development mailed the March 4, 2021 (reference 01) decision to the claimant's Red Oak last-known address of record. The reference 01 decision denied benefits for the period beginning April 26, 2020, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and was not partially unemployed within the meaning of the law. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by March 14, 2021 or was received by the Appeals Section by that date. The reference 01 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 14, 2021 was a Sunday and the next working day was Monday, March 15, 2021. The claimant received the reference 01 decision in a timely manner, prior to the deadline

for appeal. The claimant elected not to take steps to file an appeal from the reference 01 decision by the appeal deadline.

On March 1, 2022 and on March 2, 2022, Iowa Workforce Development mailed overpayment decisions to the claimant. Each of the overpayment decisions referred to the earlier decision that denied benefits based on the able and available determination. The overpayment decisions included March 11, 2022 and March 12, 2022 appeal deadlines respectively.

On March 11, 2022, the claimant drafted an appeal. On that same day, the claimant mailed his appeal to the Appeal Bureau. The appeal is postmarked March 11, 2022. The Appeals Bureau received the appeal on March 15, 2022 and treated as an appeal from all four overpayment decisions and as a late appeal from the earlier decision that denied benefits.

### **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).

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the March 4, 2021 (reference 01) decision. The evidence establishes that the claimant received the reference 01 decision in a timely manner, had a reasonable opportunity to file an appeal by the applicable appeal deadline, but elected not to file an appeal by the deadline. The claimant unreasonably delayed filing the appeal to March 11, 2022. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. 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 untimely, administrative law judge lacks jurisdiction to disturb the March 4, 2021 (reference 01) 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 claimant's appeal from the March 4, 2021 (reference 01) decision was untimely. The decision that denied benefits for the period beginning April 26, 2020, based on the deputy's conclusion that the claimant was still employed for the same hours and wages and was not partially unemployed, remains in effect.



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James E. Timberland  
Administrative Law Judge

June 7, 2022  
Decision Dated and Mailed

jet/kmj