

**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**

**HEATHER D BRUMBAUGH
432 MERROUGE
OTTUMWA IA 52501**

**CARDINAL COMMUNITY SCHOOL DISTRICT
4045 ASHLAND RD
ELDON IA 52554**

**Appeal Number: 05A-UI-02063-RT
OC: 01/09/05 R: 03
Claimant: Appellant (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 claimant, Heather D. Brumbaugh, filed an appeal from an unemployment insurance decision dated February 9, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 16, 2005, with the claimant participating. Arnold Snook, Superintendent of Schools, participated in the hearing for the employer, Cardinal Community School District. Department Exhibit One was 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 February 9, 2005, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate that claimant voluntarily quit work on December 21, 2004 for personal reasons and her quitting was not caused by her employer. This decision was sent on the same day, February 9, 2005, to the parties. This decision was received by the claimant on February 10, 2005. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by February 21, 2005 (the decision actually said February 19, 2005, but since that was a Saturday the appeal would be due the next business or working day.) However, as shown at Department Exhibit One, the claimant's appeal was filed on February 28, 2005 when she left it at the local Workforce Development office in Ottumwa, Iowa on February 28, 2005 and it was faxed to the Appeals Section by the local office on that date. The claimant's appeal is dated February 28, 2005. The claimant's appeal is seven days late. The only reason given by the claimant for the delay in filing her appeal was the illness and death of her husband's grandmother. The claimant was out of town for four days from February 16, 2005 to February 19, 2005 and then the grandmother died and the funeral was February 22, 2005. Prior to that time, the grandmother of the claimant's husband was in Ottumwa, Iowa where the claimant resides. Because of the family problems related to the grandmother of the husband, the claimant did not give the appeal priority and therefore delayed in filing her appeal. There was no error or misinformation on the part of Iowa Workforce Development or delay or other action by the United State Postal Service that contributed to the claimant's delay in filing the appeal.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

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

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. 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.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for a delay in the filing of her appeal. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for a delay in the filing of her appeal. On its face, as shown at Department Exhibit One and as set out in the Findings of Fact, the claimant's appeal was seven days late. The claimant testified, and her appeal demonstrates, that she received the decision from which she seeks to appeal on February 10, 2005. The claimant had sufficient time to file her appeal. The claimant testified that she did not file her appeal because of personal problems involving the illness and the death of the grandmother of her husband. This involved the claimant being out of town for four days from February 16 through February 19, 2005. However, the claimant was in town for six days prior to leaving to go out of town. The funeral was not until February 22, 2005. The claimant testified that she did not give the appeal priority in view of the family problems. However, the administrative law judge believes that the claimant could have found time in at least the first six days after receiving the decision to file her appeal. The claimant testified that she did see the appeal deadline of February 19, which is extended to February 21, 2005. The claimant has not demonstrated good cause for a delay in the filing of her appeal. There is no evidence that the claimant's delay in filing her appeal was due to any error or misinformation on the part of Iowa Workforce Development or any delay or other action by the United States Postal Service. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated February 9, 2005, reference 01, is not timely and the claimant has not demonstrated good cause for a delay in the filing of her appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issue presented. The administrative law judge further concludes that the representative's decision of February 9, 2005, reference 01, should remain in full force and effect.

DECISION:

The representative's decision dated February 9, 2005, reference 01, is to remain in full force and effect. The claimant, Heather D. Brumbaugh, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits. The claimant's attempted appeal was not timely and the claimant has not demonstrated good cause for its delay.

kjf/sc