

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM J GNEWUCH
Claimant

UNVERFERTH MFG CO
Employer

APPEAL NO. 20A-UI-03126-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/21/14
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(5) – Deductibility of TTD Worker’s Compensation Benefits

STATEMENT OF THE CASE:

William Gnewuch filed a late appeal from the December 21, 2015, reference 05, decision that denied benefits for the two-week period of September 27, 2015 through October 10, 2015, based on the deputy’s conclusion that Mr. Gnewuch had received worker’s compensation benefits for total temporary disability for that period that were deductible from his unemployment insurance benefits and that exceeded his weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held on May 7, 2020. Mr. Gnewuch participated. Lori Shimp represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-03127-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the December 21, 2015, reference 05, decision and of the January 5, 2016, reference 07, decision.

ISSUE:

Whether there is good cause to treat the claimant’s late appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Gnewuch established an original claim for benefits that was effective December 21, 2014. On December 21, 2015, Iowa Workforce Development mailed the December 21, 2015, reference 05, decision to Mr. Gnewuch’s last known address of record. The reference 05 decision denied benefits for the two-week period of September 27, 2015 through October 10, 2015, based on the deputy’s conclusion that Mr. Gnewuch received worker’s compensation benefits for total temporary disability for that period that were deductible from his unemployment insurance benefits and that exceeded his weekly unemployment insurance benefit amount. The reference 05 decision stated that the decision would become final unless an appeal was postmarked by December 31, 2015 or was received by the Appeal Section by that date. The weight of the evidence establishes that Mr. Gnewuch received the decision in a timely manner, prior to the deadline for appeal. Mr. Gnewuch asserts that he filed an appeal from the decision in February or March 2016. The Appeals Bureau did not receive an appeal from the decision

until April 14, 2020, when Mr. Gnewuch emailed a cursory appeal indicating, "I'd like to appeal my overpayment made back in 2016."

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 appeal in this matter was filed on April 14, 2020, when the Appeals Bureau received the electronically transmitted appeal. The weight of the evidence does not support Mr. Gnewuch's assertion that he filed an appeal from December 21, 2015, reference 05, decision in February or March 2016.

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 first question in this case is 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 an appeal by the December 31, 2015 appeal deadline. Mr. Gnewuch testified at one point in the hearing that he received the decision around Christmas. At another point, he asserted that he received the decision two weeks after it was mailed from Des Moines. There is insufficient evidence to establish that the decision took more than two or three days to get to Mr. Gnewuch's address of record in Dunkerton, Iowa subsequent to being mailed from Des Moines on December 21, 2015. Mr. Gnewuch was not denied a reasonable opportunity to file an appeal by the appeal deadline set forth on the decision. The delay in filing the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). There is not good cause to treat the late appeal as a timely appeal.

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 weight of the evidence establishes unreasonable delay in filing the appeal that exceeded four years. Even if the evidence had supported Mr. Gnewuch's dubious assertion that he received the decision two weeks after it was mailed from Des Moines, and even if the evidence had supported Mr. Gnewuch's dubious assertion that he filed an appeal in February or March 2016, the evidence would still establish unreasonable delay in filing the appeal.

Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the decision from which Mr. Gnewuch appeals. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant's appeal was untimely. The December 21, 2015, reference 05, decision that denied benefits for the two-week period of September 27, 2015 through October 10, 2015, based on the deputy's conclusion that the claimant received worker's compensation benefits for total temporary disability for that period that were deductible from his unemployment insurance benefits and that exceeded his weekly unemployment insurance benefit amount, remains in effect.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

May 14, 2020
Decision Dated and Mailed

jet/scn