

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELVIN O TANKSON**

Claimant

**APPEAL NO. 14A-UI-04645-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PREMIER CASTING SERVICES**

Employer

**OC: 07/07/13**

**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Attendance

Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Melvin Tankson filed an appeal from the April 14, 2014, reference 06, decision that disqualified him for benefits. After due notice was issued, a hearing was held on May 22, 2014. Mr. Tankson participated. Mikeala Smith represented the employer. Department Exhibits D-1 and D-2 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 14, 2014, Iowa Workforce Development mailed a copy of the April 14, 2014, reference 06, decision to Melvin Tankson's last-known address of record. The decision disqualified Mr. Tankson for benefits based on an agency conclusion that Mr. Tankson had been discharged for misconduct in connection with the employment. Mr. Tankson received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked by April 24, 2014, or received by the Appeals Section by that date. Mr. Tankson has an 11th grade education and a reading disability. At all relevant times, Mr. Tankson had the assistance of his child's mother, who is not learning disabled. Mr. Tankson was also familiar with the Waterloo Workforce Development Center and had transportation to that Center. Mr. Tankson read a portion of the decision he received, enough to see that it disqualified him for benefits, but he did not read the entire decision. On May 6, 2014, Mr. Tankson went to the Waterloo Workforce Development Center, completed an appeal form, and delivered the completed form to the Center staff. The Appeals Section received the appeal the same day by fax.

## 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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).

While Mr. Tankson's limited education and learning disability are factors to be weighed in deciding whether he had a reasonable opportunity to file a timely appeal, the weight of the evidence in the record shows that Mr. Tankson did indeed have a reasonable opportunity to file a timely appeal. Mr. Tankson had received the decision in a timely manner. Mr. Tankson read enough of the decision to understand that it disqualified him for benefits. Mr. Tankson had the assistance of his child's mother, who is not learning disabled. Mr. Tankson had familiarity with the Waterloo Workforce Development Center, transportation to the Center, and the ability to access assistance from the Center in a timely manner. That ability is reflected in Mr. Tankson's belated trip to the Workforce Development Center to file a late appeal.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was to delay on the part of Mr. Tankson. The late filing 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 claims deputy's April 14, 2014, reference 06, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits remains in effect.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css