

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIAS FLORES ACOSTA**  
Claimant

**APPEAL NO. 16A-UI-05093-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA PREMIUM LLC**  
Employer

**OC: 01/10/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Elias Flores Acosta filed a late appeal from the January 28, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on a conclusion that Mr. Flores Acosta was discharged on January 7, 2016 for violation of a known company rule. After due notice was issued, a hearing was held on May 17, 2016. Mr. Flores Acosta participated. The employer representative, Jenny Mora, was not available at the number the employer provided for the hearing and did not participate in the hearing. A CTS Language Link Spanish-English Interpreter, Sandy #9407, assisted with the hearing. Exhibit A and Department Exhibit D-1 were received into evidence.

**ISSUE:**

Whether there is good cause to treat Mr. Flores Acosta's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elias Flores Acosta is a Spanish-speaking person and is originally from El Salvador. On January 27, 2016, Mr. Flores Acosta participated in an telephone fact-finding interview with a Workforce Development claims deputy to discuss his January 7, 2016 discharge from Iowa Premium, L.L.C. During the fact-finding interview, the claims deputy told Mr. Flores Acosta that the deadline for appealing the claims deputy's decision would be 10 days from the mailing date of the decision. On January 28, 2016, Iowa Workforce Development mailed a copy of the January 28, 2016, reference 01, decision to Mr. Flores Acosta's last-known address of record. The address of record is a trailer park in Toledo, Iowa where Mr. Flores rents a room in a trailer. The reference 01 decision disqualified Mr. Flores Acosta for benefits based on a conclusion that Mr. Flores Acosta was discharged on January 7, 2016 for violation of a known company rule. The decision arrived at Mr. Flores Acosta's address of record in a timely manner, prior to the deadline for appeal. The decision stated that an appeal from the decision must be postmarked by February 7, 2016 or be received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. February 7, 2016 was a Sunday. The

next working day was Monday, February 8, 2016. The back of the decision contained information regarding appeal rights, the deadline for appeal, and the steps for appealing the decision. Though the information on the front of the decision was in English, the information on the back of the decision was in both English and Spanish.

On February 1, 2016, Mr. Flores Acosta left for El Salvador to visit his mother who he understood was serious ill. Mr. Flores Acosta cannot remember whether he received the January 28, 2016, reference 01 decision prior to leaving for El Salvador, but does not believe the decision would have taken more than a couple days to get from Des Moines to his address in Toledo.

Mr. Flores Acosta returned to Toledo on or about April 5, 2016. Mr. Flores Acosta was in possession of the January 28, 2016, reference 01, decision once he returned to Toledo. Mr. Flores Acosta did not turn the decision over to review the information provided in Spanish.

During the week of April 24-30, 2016, Mr. Flores Acosta took the reference 01 decision to the Workforce Development Center in Marshalltown for the purpose of meeting with a Workforce Advisor to discuss the decision. Mr. Flores Acosta learned that he needed an appointment and made an appointment for the following Wednesday, May 4, 2016. On May 4, 2016, Mr. Flores Acosta met with the Workforce Advisor and completed an appeal form. Mr. Flores Acosta left the completed appeal form with the Workforce Advisor. The Appeals Bureau received the appeal form the same day by fax.

#### **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).

Mr. Flores Acosta's appeal was filed on May 4, 2016, when he delivered the completed form to the Workforce Advisor at the Marshalltown Workforce Development Center.

More than ten calendar days elapsed between the mailing date of the decision and the date that Mr. Flores Acosta filed his appeal. Indeed, it was 97 days, more than three months, from the mailing date of the decision and the filing of the appeal. 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 Mr. Flores Acosta did not have a reasonable opportunity to file an appeal by the February 8, 2016 extended deadline because he had a family emergency that required him to travel to El Salvador toward the beginning of the appeal period. Mr. Flores Acosta remained in the El Salvador through the remainder of the stated appeal period and did not return home until on or about April 5, 2016.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

The evidence in the record establishes that it was three weeks, not one, between Mr. Flores Acosta's arrive back in Toledo and his first trip to the Marshalltown Workforce Development. The information Mr. Flores needed to file the appeal was actually on the backside of the decision and there was no need for Mr. Flores Acosta to travel to Marshalltown for assistance. Mr. Flores Acosta knew at the time of the January 27, 2016 fact-finding interview that he only had 10 days from the mailing date of the decision to file an appeal from it. When he returned to Toledo on or about April 5, he knew he was already past the appeal deadline. Yet he delayed

taking further action on the matter until the last week of April. Mr. Flores Acosta did not have good cause for the further delay in taking action on the matter. Due to the unreasonable delay attributable to Mr. Flores Acosta, the evidence fails to establish good cause to treat the late appeal as a timely appeal.

The appeal was not timely filed pursuant to Iowa Code section 96.6(2). Mr. Flores Acosta has failed to preserve his right to appeal the lower decision. Due to the untimeliness of the appeal, 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). For that reason, this decision will not further address Mr. Flores Acosta's January 7, 2016 discharge.

**DECISION:**

The January 28, 2016, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits, and that relieved the employer's account of liability for benefits, based on the January 7, 2016 discharge remains in effect. The claimant is disqualified for benefits until he has worked in been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs