

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN E BALES

Claimant

APPEAL NO. 13A-UI-12465-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO

Employer

OC: 06/03/12

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Megan Bales filed an appeal from the October 17, 2013, reference 02, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit employment with Nationwide Mutual Insurance Company on September 20, 2012 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 2, 2013. Ms. Bales participated. Dedra Irvine represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-12464-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits D-1 and D-2 into evidence.

ISSUE:

Whether Ms. Bales' appeal from the October 17, 2013, reference 02, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

On October 17, 2013, Iowa Workforce Development representative mailed a copy of the October 17, 2013, reference 02, decision to Megan Bales at her last-known address of record. Ms. Bales received the decision on October 18, 2013. The decision disqualified Ms. Bales for benefits in connection with a September 20, 2012 separation from employer Nationwide Mutual Insurance Company. The decision contained a warning that any appeal from the decision must be postmarked by October 27, 2013 or received by the Appeals Section by that date. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. October 27, 2013 was a Sunday and the next working day was Monday, October 28, 2013. Ms. Bales took no steps to file an appeal of the October 17, 2013, reference 02, decision by the October 28, 2013 extended deadline and the decision became a final agency decision.

On November 1, 2013, Iowa Workforce Development mailed a copy of the November 1, 2013, reference 03, overpayment decision to Ms. Bales at her last-known address of record. The overpayment decision was prompted by the October 17, 2013, reference 02, disqualification decision. On November 3, 2013, Ms. Bales drafted an appeal from the overpayment decision and included in the appeal document comments about her separation from Nationwide Insurance. Ms. Bales mailed her appeal in an envelope that bears a November 5, 2013 postmark. Ms. Bales enclosed a copy of the overpayment decision with her appeal letter. The Appeals Section received the appeal on November 8, 2013 and treated the appeal as an appeal from both the October 17, 2013, reference 02, disqualification decision and the November 1, 2013, reference 03, overpayment decision.

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, 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).

The appeal in question was filed on November 5, 2013, the date of the postmark on the envelope in which the appeal was mailed.

The evidence in the record establishes that more than ten calendar days elapsed between the date that Iowa Workforce Development mailed the October 17, 2013, reference 02, decision to Ms. Bales and the day she filed her 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 Ms. Bales did have a reasonable opportunity to file a timely appeal from the October 17, 2013, reference 02, disqualification decision. When Ms. Bales received the decision on October 18, 2013, she had 10 days in which to file a timely appeal from that decision. Ms. Bales did not take any steps to file an appeal from the October 17, 2013, reference 02, disqualification decision until after the deadline for appealing that decision had passed.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law 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). The administrative law judge further concludes that the appeal from the October 17, 2013, reference 02, decision was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the October 17, 2013, reference 02, disqualification 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 Agency representative's October 17, 2013, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that disqualified the claimant for benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs