

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ORFEAS A KETCHELOS
Claimant

APPEAL NO. 19A-UI-08316-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/01/19
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Admin. Code r. 871-242(1)(e) – Failure to Report as Directed
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Orfeas Ketchelos filed a late appeal from the October 3, 2019, reference 01, decision that denied benefits effective September 29, 2019, based on the Agency representative's determination that Mr. Ketchelos was mailed a notice to report for a Reemployment and Eligibility Assessment on October 1, 2019, failed to appear for the assessment as scheduled, and therefore did not meet the availability requirement. After due notice was issued, a hearing was held on November 21, 2019. Mr. Ketchelos participated. Jennifer Shepherd, RESEA Career Planner, participated in the hearing. Exhibits A and 2 were received into evidence.

ISSUE:

Whether there is good cause to treat Mr. Ketchelos' late appeal from the October 3, 2019, reference 01, decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 3, 2019, Iowa Workforce Development mailed the October 3, 2019, reference 01, decision to the claimant, Orfeas Ketchelos, at his last-known address of record. The decision was mailed from Des Moines. Mr. Ketchelos's address of record is in West Des Moines. The reference 01 decision denied benefits effective September 29, 2019, based on the Agency representative's determination that Mr. Ketchelos was mailed a notice to report for a Reemployment and Eligibility Assessment on October 1, 2019, failed to appear for the assessment as scheduled, and therefore did not meet the availability requirement. The decision stated that an appeal from the decision must be postmarked by October 13, 2019 or be received by the Appeal Section by that date. The decision also stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. October 13, 2019 was a Sunday and the next working day was Monday, October 14, 2019. The October 3, 2019, reference 01, decision arrived at Mr. Ketchelos' mailbox in a timely manner, most likely within a day or two of the October 3 mailing date. Mr. Ketchelos is in the habit of not checking his mailbox on a regular basis. Mr. Ketchelos

forewent checking his mailbox for a matter of weeks and did not collect the October 3, 2019 correspondence until sometime between October 18 and 23, 2019. By the time Mr. Ketchelos collected the decision from his mailbox, the appeal deadline had passed. On October 23, 2019, Mr. Ketchelos filed an online appeal. The Appeals Bureau received the appeal that same day.

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).

Mr. Ketchelos's appeal was filed on October 23, 2019, when the Appeals Bureau received the appeal that Mr. Ketchelos had electronically transmitted that same day.

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).

The evidence in the record establishes an untimely appeal. The decision arrived at Mr. Ketchelos's last-known address in a timely manner. Mr. Ketchelos had a reasonable opportunity to file an appeal by the October 14, 2019 extended appeal deadline. Mr. Ketchelos elected to take an unreasonable approach to handling his mail and elected to ignore his mail box for a matter of weeks. Mr. Ketchelos' election and inaction caused the appeal to be late. Neither Iowa Workforce Development nor the United States Postal Service caused the appeal to be late. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2) (defining good cause to treat a late appeal as a timely appeal). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the October 3, 2019, reference 01, 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 October 3, 2019, reference 01, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that denied benefits effective September 29, 2019, based on the Agency representative's determination that the claimant failed to report as directed for an October 1, 2019 Reemployment and Eligibility Assessment, shall stand.

The present decision regarding the timeliness of appeal from the October 3, 2019, reference 01, decision has no impact on the October 20, 2019, reference 02, decision that allowed benefits effective October 20, 2019, provided the claimant is otherwise eligible, based on the Agency representative's determination that the claimant had by that time completed the RESEA assessment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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