

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMUEL L GRAY**  
Claimant

**NORTHWESTERN PLASTICS LTD  
INDUSTRIAL SERVICE CORP**  
Employer

**APPEAL NO: 12A-UI-11378-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/11  
Claimant: Appellant (1)**

Section 96.5-2a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 17, 2012, reference 02, that held he was discharged for misconduct on July 24, 2012, and benefits are denied. A telephone hearing was held on October 17, 2012. The claimant participated. Linda Tickle, HR Manager, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on August 17, 2012 with an appeal deadline date of August 27. The claimant received the decision within a few days. He submitted an appeal to his workforce center on September 24.

Although he had recent oral surgery about the time he got the decision, he was able to leave his residence for medical appointments. He waited until September 24 to appeal because he wanted to visit with a department representative about the decision. The reverse side of the decision has appeal instructions that provide claimant can submit a written appeal by mail with an address to send it to.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for the appeal delay.

**DECISION:**

The department decision dated August 17, 2012, reference 02, is affirmed. The claimant failed to file a timely appeal, and the department decision he was discharged for misconduct on July 24, 2012 remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs