

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JAMES K MARCINIAK
508 DAKOTA ST
KLEMME IA 50449**

**IOWA MOLD TOOLING COMPANY INC
500 HWY 18 W
GARNER IA 50438**

**Appeal Number: 05A-UI-03542-RT
OC: 07-04-04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, James K. Marciniak, filed an appeal from an unemployment insurance decision dated March 18, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 25, 2005, with the claimant participating. Connie Marciniak, the claimant's wife, testified for the claimant. Rhonda Krause, Human Resources Manager, participated in the hearing for the employer, Iowa Mold Tooling Company, Inc. Department Exhibit One and Employer's Exhibit One were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on March 18, 2005, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate he voluntarily quit work on January 31, 2005 because of a non work-related illness or injury and his quitting was not caused by his employer. This decision was sent to the claimant on the same day and received by the claimant no later than March 24, 2005. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by March 28, 2005. However, as shown at Department Exhibit One, the claimant did not fax his appeal until April 4, 2005, seven days late. The claimant's appeal is dated April 4, 2005. The only reason for the delay in filing his appeal was that the claimant had determined initially not to file his appeal. The claimant did not believe that he would win his appeal. The fact finder did not tell the claimant he should not appeal and, in fact, did not tell the claimant that he would not win his appeal if he would file one. The fact finder was silent on the appeal. The decision from which the claimant seeks to appeal clearly indicates that the claimant has the right to appeal and states that the decision is final unless an appeal is postmarked by March 28, 2005 or received by the Appeals Section by that date. On or about April 2, 2005, someone from Iowa Workforce Development called the claimant and indicated that it sounded to her as if the claimant's separation was the fault of the employer. The claimant then decided to file his appeal and did so. This phone call from Iowa Workforce Development was on Saturday, April 2, 2005, after the deadline for the appeal.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The administrative law judge concludes that the claimant's appeal was not timely and the claimant has not demonstrated good cause for the delay in the filing of his appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge does not have jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.

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 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.

871 IAC 24.35(1)(2) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, 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 is 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.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that his appeal was timely or that he had good cause for the delay in the filing of his appeal. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence either that his appeal was timely or that he had good cause for the delay in the filing of his appeal. On the face of the claimant's appeal as shown at Department Exhibit One and as set out in the findings of fact, the claimant's appeal is seven days late. The claimant testified that he received the decision from which he seeks to appeal no later than March 24, 2005, which still gave the claimant four days to file his appeal within the deadline. The claimant testified that he did not file his appeal because he did not think he would win. The claimant seems to blame the fact finder for this but the claimant testified that the fact finder did not tell him not to file an appeal and the fact finder did not tell him that he would not win on appeal. The claimant simply made up his mind not to file an appeal because he did not think he would win. The claimant then testified that someone from Iowa Workforce Development called him on Saturday, April 2, 2005 and told him that the situation sounded as if the employer was at fault for his separation and the claimant should appeal. He, therefore, did so. The administrative law judge is skeptical about the phone call from Iowa Workforce Development since it came on a Saturday and generally, Iowa Workforce Development employees do not work on Saturday. The administrative law judge also notes that even though he was called on Saturday, April 2, 2005, the claimant did not prepare an appeal and fax it until April 8, 2005. In any event, the phone call on April 2, 2005, if it occurred, occurred four days after the deadline for the appeal and the claimant had already determined not to file an appeal. If the Claims Section believes the decision is in error, it can issue an amended decision. However, concerning the appeal, the administrative law judge must conclude here that the claimant's delay in filing his appeal was not due to any error or misinformation on the part of Iowa Workforce Development or any delay or other action by the U.S. Postal Service but his own conscious decision. This is not good cause. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of a decision dated

March 18, 2005, reference 01, is not timely and the claimant has not demonstrated good cause for the delay in the filing of his appeal. Therefore, the administrative law judge concludes the claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issue presented, the separation from employment. The administrative law judge finally concludes that the representative's decision of March 18, 2005, reference 01, should remain in full force and effect.

DECISION:

The representative's decision of March 18, 2005, reference 01, is to remain in full force and effect. The claimant, James K. Marciniak, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

pjs/pjs