

**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**

**MICHAEL H COURTNEY
625 IRVING #9
DES MOINES IA 50315**

**FOODS INC
4343 MERLE HAY RD
DES MOINES IA 50310**

**Appeal Number: 05A-UI-02148-RT
OC: 12/26/04 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, Michael H. Courtney, filed an appeal from an unemployment insurance decision dated January 19, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued for a telephone hearing on March 16, 2005, at 10:00 a.m., neither the claimant nor the employer, Foods, Inc., responded to the notice of appeal and telephone hearing by calling in telephone numbers either before the hearing or 15 minutes after the time for the hearing, where any witnesses could be reached for the hearing. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on January 19, 2005, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate that he left his employment voluntarily on October 15, 2004 and has failed to produce evidence showing that he had good cause for voluntarily leaving his employment. This decision was sent to the claimant on January 19, 2005, at the same address as shown on the claimant's appeal. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by January 31, 2005 (the decision stated January 29, 2005, but since that was a Saturday, the appeal would be due the next business or working day). However, the claimant's appeal was left at a local Iowa Workforce Development office on March 1, 2005 making the appeal 29 days late. The claimant did not participate in the hearing and provide reasons why his appeal was late.

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 a delay in the filing of his appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from the 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(2) provides:

(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 a 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 a delay in the filing of his appeal. As set out in the Findings of Fact, the claimant's attempted appeal was 29 days late. The decision from which the claimant seeks to appeal was sent to the claimant at the same address as shown in the claimant's appeal. It does not appear that the claimant participated in fact-finding and the claimant's appeal is silent in regards to the reason for a delay in the filing of his appeal. The claimant did not participate in the hearing and provide reasons why his appeal was late. There is no evidence that the delay in the filing of his appeal was due to any Iowa Workforce Development error or misinformation or a delay or other action by the United States Postal Service. Therefore, the administrative law judge concludes that there is not good cause for a delay in the filing of the claimant's appeal. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated January 19, 2005, reference 01, is not timely and the claimant has not demonstrated good cause for a delay in the filing of his appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and that the administrative law judge lacks jurisdiction to make a determination with respect to the other issue presented. The administrative law judge finally concludes that the representative's decision of January 19, 2005, reference 01, should remain in full force and effect.

DECISION:

The representative's decision dated January 19, 2005, reference 01, is to remain in full force and effect. The claimant, Michael H. Courtney, 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.

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