

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNA M MEHAFFY
Claimant

APPEAL NO. 16A-UI-05366-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 03/13/16
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Shawna Mehaffy filed an appeal from the April 5, 2016, reference 01, decision that denied benefits effective March 13, 2016, based on an Agency conclusion that she was unable to work due to illness. After due notice was issued, a hearing was held on May 25, 2016. Ms. Mehaffy participated. Marcy Schneider of Equifax represented the employer and presented testimony through Nordstrom Human Resources Assistant Jill McDowell. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-05367-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

Whether Ms. Mehaffy's appeal from the April 5, 2016, reference 01, decision was timely.

Whether Ms. Mahaffey has been able to work and available for work since April 17, 2016, the effective date of her additional claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawna Mehaffy established a claim for unemployment insurance benefits that was effective March 13, 2016. Ms. Mehaffy filed a weekly claim for the weeks ending March 19, 2016 and March 26, 2016. Ms. Mehaffy then discontinued her claim for benefits. From December 2015 through April 17, 2016, Ms. Mehaffy was on an approved medical leave of absence from her full-time employment with Nordstrom, Inc. The medical leave of absence was based on migraine headaches. Ms. Mehaffy discontinued her claim for unemployment insurance benefits after she learned that the employer's short-term disability benefits administrator was extending her short-term disability benefits through April 17, 2016.

On April 5, 2016, Iowa Workforce Development mailed a copy of the April 5, 2016, reference 01 decision to Ms. Mahaffey at her last-known address of record. The decision denied benefits effective March 13, 2016, based on an agency conclusion that Ms. Mehaffy was unable to perform work due to illness. The decision stated that an appeal from the decision must be

postmarked by April 15, 2016 or received by the Iowa Workforce Development Appeal section by that date. Ms. Mahaffey received the decision in a timely manner, prior to the appeal deadline, decided she did not need unemployment insurance benefits at the time, and elected not to take steps to file an appeal by the appeal deadline.

Ms. Mahaffey established an additional claim for benefits that was effective April 17, 2016.

On May 3, 2016, Iowa Workforce Development mailed a copy of the May 3, 2016, reference 02, decision to Ms. Mahaffey at her last-known address of record. The reference 02 decision disqualified Ms. Mahaffey for unemployment insurance benefits, based on an Agency conclusion that she had voluntarily quit employment with Nordstrom Inc., on April 13, 2016 without good cause attributable to the employer. The May 3, 2016 decision contained a May 13, 2016 deadline for appeal. On May 11, 2016, Ms. Mahaffey used the Workforce Development website to file an online appeal from the reference 02 decision. The Appeals Bureau treated the May 11 appeal as an appeal also from the April 5, 2016, reference 01, decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Ms. Mehaffy's appeal was filed on May 11, 2016, when the Appeals Bureau received the online appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the April 5, 2016, reference 01, decision and the May 11, 2016 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. Mehaffy did have a reasonable opportunity to file a timely appeal from the April 5, 2016, reference 01, decision that denied benefits effective March 13, 2016 based on an agency conclusion that she was unable to perform work due to illness. Ms. Mahaffey elected not to file an appeal of the reference 01 decision by the April 15, 2016 appeal deadline and did not file an appeal from any decision until May 11, 2016. Because the late appeal from the April 5, 2016, reference 01, decision was not attributable to any Workforce Development error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal from the April 5, 2016, reference 01, decision as a timely appeal. See 871 IAC 24.35(2). Because the appeal from that decision was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower 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 April 5, 2016, reference 01, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that denied benefits effective March 13, 2016, based on a conclusion that the claimant was not able to work due to illness remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs