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

JASON M TRUE
1016 – 440TH ST
ST ANSGAR IA 50472

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 06A-UI-01068-DT
OC: 07/03/05 R: 02
Claimant: Appellant (2)

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 96.5-3-a – Work Refusal
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Jason M. True (claimant) appealed a representative's January 3, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with a refusal of a recall to work with Winnebago Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2006. The claimant participated in the hearing. Gary McCarthy appeared on the employer's behalf. During the hearing, Exhibit A-1 and Employer's Exhibit One were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely? Did the claimant refuse an offer of recall to suitable work without good cause?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on January 3, 2006. That address was #2, 148 – 10th St. SW, Mason City, Iowa 50401-5760. The claimant had not been at that address since approximately November 12, 2005, and he did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 13, 2006. The appeal was not filed until it was hand-delivered to the local Agency office on January 24, 2006, which is after the date noticed on the disqualification decision. The claimant learned of the disqualification decision when he contacted the local Agency office by phone on or about January 22, 2006 to learn why his benefits had been discontinued.

The claimant started working for the employer on June 28, 2004. He worked full time as a production assembler in the employer's motor home manufacturing facility. His last day of work was August 26, 2005. The employer laid him off as of that date.

On December 8, 2005, the employer's personnel supervisor, Mr. McCarthy, sent a letter by certified mail to the claimant at the address of 716 S 9th St., Apt. 25, Clear Lake, Iowa 50428-3809, the address at which the claimant had been at the time of the layoff, before moving to the address in Mason City, before moving to the address in St. Ansgar. The letter indicated that the employer had been seeking to contact the claimant by telephone to recall him from layoff, and that the claimant needed to make contact with Mr. McCarthy "within three (3) working days of the signed receipt of this letter." However, there was no "signed receipt" of the letter, as it was returned by the United States Postal Service as undeliverable, "moved left no address, unable to forward," and it was returned to the employer.

On or about January 12, 2006, after talking to other former coworkers, the claimant learned that the employer had been attempting to contact him, and he contacted Mr. McCarthy. However, at that time Mr. McCarthy informed him that there was no longer any position available for the claimant and he was considered to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision.

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). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant’s control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code §96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The substantive issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code section 96.5-3-a provides:

> An individual shall be disqualified for benefits:
>
> 3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

In this case, while the employer followed the proper steps toward making a bona fide offer of recall to work, inherent with the requirement that the offer be sent by certified mail is the expectation that it actually be received. While the employer may have had an expectation that the claimant, as a laid off employee, keep the employer advised as to his current address, there is no requirement to the effect applicable to laid off employees in the unemployment insurance law. Here, the claimant did not receive the offer of recall and did not make a definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 3, 2006 decision (reference 01) is reversed. The appeal is treated as timely. The claimant did not refuse a suitable offer of recall to work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs