

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAKIA M GRANT
Claimant

APPEAL NO. 13A-UI-00037-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 11/25/12
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the December 14, 2012, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on February 5, 2013. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jenny O'Brien, Human Resources Specialist, represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat the employer's late appeal as a timely appeal. There is not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A telephonic fact-finding interview occurred on December 13, 2012. The employer submitted a written statement for the fact-finding interview, but did not have a representative participate in the actual call. The Workforce Development representative who conducted the fact-finding interview nonetheless attempted to contact the employer representative, Jenny O'Brien, Human Resources Specialist, at the time the fact-finding interview. When Ms. O'Brien did not answer the call, the Workforce Development representative left a voicemail message advising Ms. O'Brien that she could expect to receive a decision as soon as the next day and that if the employer disagreed with the decision the employer had the right to file an appeal within 15 days for the mailing date of the decision.

On December 14, 2012, Workforce Development mailed a copy of the December 14, 2012, reference 01, decision to the employer's last-known address of record. The reference 01 decision allowed benefits to the claimant, provided she was otherwise eligible, and held that the employer's account could be charged for benefits. The correspondence was postmarked December 14, 2012. The decision was received by Systems Unlimited in a timely manner prior

to the deadline for appeal, most likely within a day or two of being mailed to the employer. The employer has a team of three receptionists who are responsible for receiving incoming mail and for routing the mail to the appropriate staff member. The decision warned that an appeal must be postmarked or received by Iowa Workforce Development Appeals Section no later than December 24, 2012. That date was a Monday and Workforce Development was open for business.

Ms. O'Brien received the decision in her inbox on December 28, 2012. The decision was still in the envelope from Workforce Development. The envelope bore the December 14, 2012 postmark. There was nothing about the envelope that would indicate it had been delayed or misdirected by the post office prior to being delivered at Systems Unlimited. Instead, the delay had come from the time systems Unlimited had received the decision to the time it was delivered to Ms. O'Brien on December 28, 2012. Ms. O'Brien received no explanation from the reception staff regarding the delay in forwarding the correspondence to her and Ms. O'Brien did not seek an explanation. Instead, Ms. O'Brien consulted with a supervisor, and then drafted an appeal letter on January 2, 2013. Ms. O'Brien faxed the appeal letter that same day and the Appeals Section received the appeal letter that same day.

REASONING AND CONCLUSIONS OF LAW:

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-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).

The appeal in question was filed on January 2, 2013, when the Appeals Section received the faxed appeal.

The evidence in the record establishes 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).

While the record indicates that Ms. O'Brien did not personally have a reasonable opportunity to file a timely appeal, the employer, Systems Unlimited, did have a reasonable opportunity to file a timely appeal. The failure to file an appeal by the deadline was attributable to delay in internal to Systems Unlimited, not to the actions of Workforce Development or the United States Postal Service. See 871 IAC 24.35(2). The appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's December 14, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css