

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA A BISHOP
Claimant

APPEAL NO. 15A-UI-04730-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

OC: 03/01/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joshua Bishop filed an appeal from the April 2, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Bishop had been discharged on March 6, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on May 27, 2015. Mr. Bishop participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether the appeal was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 2, 2015, Iowa Workforce Development mailed a copy of the April 2, 2015, reference 01, decision to Joshua Bishop at his last-known address of record. The decision disqualified him for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Bishop had been discharged on March 6, 2015 for misconduct in connection with the employment. The decision contained a warning that an appeal from the decision must be postmarked by April 12, 2015 or received by the Appeals Section by that date. Mr. Bishop received the decision in a timely manner prior to the deadline for appeal. On April 8, 2015, Mr. Bishop drafted an appeal letter but did not immediately mail it because he lacked a stamp. After the appeal deadline has passed, Mr. Bishop took his appeal letter to the post office and placed it in the mail. The mailed appeal is postmarked April 17, 2015.

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).

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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The weight of the evidence indicates that Mr. Bishop's appeal is untimely. Though Mr. Bishop received the decision in a timely manner and drafted an appeal on April 8, 2015, he then elected to delay mailing his appeal until after the appeal deadline had passed. The appeal was filed on April 17, 2015, which is the postmark date of the mailed appeal. Neither Workforce Development nor the United States Postal Service made the appeal late. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code Section 96.6(2), Mr. Bishop had failed to preserve his right to challenge the April 2, 2015, reference 01, decision and the administrative law judge lacks jurisdiction to disturb that 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 2, 2015, reference 01, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the March 6, 2015 discharge, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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