

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH M CRAMER
Claimant

APPEAL NO. 12A-UI-13018-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/30/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joseph Cramer filed an appeal from the October 16, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 30, 2012. Mr. Cramer participated and presented additional testimony from Richard Crouse. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A through C and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 16, 2012, Iowa Workforce Development mailed a copy of the October 16, 2012, reference 01 decision to Joseph Cramer's last-known address of record. Mr. Cramer received the decision on October 16, 2012. The decision denied benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 26, 2012. Mr. Cramer has a tenant, Richard Crouse, who resides in Mr. Cramer's home. Mr. Cramer enlisted the assistance of Mr. Crouse to fax an appeal to the Appeals Section. On October 22, 2012, Mr. Crouse made multiple unsuccessful attempts to fax Mr. Cramer's appeal to the Appeals Section between 8:40 p.m. and 9:23 p.m. The transaction report for those attempts indicates that none of the attempts was successful and that zero pages were transmitted to Workforce Development. The fax machine Mr. Crouse was attempting to use printed a fax transaction report at 9:23 p.m. on October 22, 2012 that documented the unsuccessful attempts to fax the appeal. Mr. Crouse provided the fax transmission report to Mr. Cramer October 23, 2012.

The Appeals Section's fax log indicates that the Appeals Section's fax machine was working properly on the evening of October 22, 2012. This is indicated by a fax successfully received by that machine at 6:34 p.m. and another successfully received at 10:07 p.m. that same evening.

Between those two times, there are several entries for which the result code is E, short for ECM. ECM is the abbreviation for Error Correction Mode. Such a code indicates that the data being transmitted is corrupt and cannot be received for that reason.

On the afternoon of October 30, 2012, Mr. Cramer attempted unsuccessfully to transmit an appeal to the Appeals Section by means of an iPhone. When that did not work, Mr. Cramer contacted the Appeals Section and spoke with clerk Donnell Anderson. Ms. Anderson allowed Mr. Cramer to submit the appeal to her email address and then printed out the appeal. Mr. Cramer's appeal was received in that manner on October 30, 2012, four days beyond the deadline for appeal set forth on the October 16, 2012 decision.

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 at issue in this matter was filed on October 30, 2012, when the Appeals Section received it by email.

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 Mr. Cramer did have a reasonable opportunity to file a timely appeal, both *before* and *after* Mr. Crouse attempted, unsuccessfully, to transmit the appeal to the Appeals Section on October 22. The weight of the evidence indicates that Mr. Cramer knew on October 23, 2012 that his appeal had not been successfully transmitted to or received by the Appeals Section. The Appeals Section did not receive the appeal until it was received by email on October 30, 2012. Even if there had been some malfunction of the Appeals Section fax machine between 8:40 p.m. and 9:23 p.m. on October 22, 2012, that would not change the fact that Mr. Cramer knew the next day that the appeal had not been received by the Appeals Section. It would also not explain why Mr. Cramer did not make further attempt to submit the appeal before October 30, 2012. The administrative law judge notes that Mr. Cramer resides in Des Moines and that the Appeals Section is located in Des Moines. Mr. Cramer could have mailed a timely appeal. Mr. Cramer could have delivered a timely appeal. Workforce Development did not make Mr. Cramer's appeal late. See Iowa Admin. Code section 871 IAC 24.35(2). The appeal was untimely under Iowa Code section 96.6(2) and, for that reason, the administrative law judge lacks jurisdiction disturb the lower decision that denied benefits. 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 October 16, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that disqualified the claimant for benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs