

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J ARNDORFER**  
Claimant

**APPEAL NO. 14A-UI-08760-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAMPTON HYDRAULICS INC**  
Employer

**OC: 07/28/13**  
**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:**

Michael Arndorfer filed an appeal from the August 1, 2014, reference 02, decision that disqualified him for benefits based on an agency conclusion that he had been discharged for excessive unexcused absences. Mr. Arndorfer requested an in-person hearing. After due notice was issued, an in-person hearing was held in Mason City on October 28, 2014. Mr. Arndorfer participated. Laura Hovenga represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-08761-JT. Exhibits Two through Eleven and A, B, C, F through I and L were received into evidence. Department Exhibits D-1 through D-4 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 August 1, 2014, Iowa Workforce Development mailed a copy of the August 1, 2014, reference 02, decision to claimant Michael Arndorfer's last-known address of record. The decision disqualified Mr. Arndorfer for benefits based on an Agency conclusion that he had been discharged for excessive unexcused absences. The decision was based on a July 28, 2013 original claim date. Mr. Arndorfer received the reference 02 decision on August 5 or 6, 2014. On August 6, 2014, Mr. Arndorfer drafted an appeal from the decision. On August 7, 2014, Mr. Arndorfer took his appeal letter to his insurance agent's office and asked the secretary to fax the appeal letter to Iowa Workforce Development. Though the secretary went through the steps to fax an appeal, the appeal was not successfully transmitted to the Appeals Section and the Appeals Section did not receive an appeal in connection with those efforts. On August 19, 2014, Mr. Arndorfer contacted the Appeals Section to inquire about the status of his appeal and learned that no appeal had been received. Mr. Arndorfer returned to the insurance agent's office on August 22, 2014, and had the secretary fax his appeal letter. Mr. Arndorfer contacted the Appeals Section that same day to confirm that his appeal had been received. The Appeals Section had indeed received an appeal by fax on August 22, 2014.

## 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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 August 22, 2014, when the Appeals Section received the appeal by fax.

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. Arndorfer did have a reasonable opportunity to file a timely appeal. The late filing of the appeal was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The late filing of the appeal was instead attributable to Mr. Arndorfer and the insurance office secretary he had enlisted to assist him. Because the late filing of the appeal was not attributable to Workforce Development or the Postal Service, the law judge further must conclude that 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 August 1, 2014, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of that disqualified the claimant for benefits remains in effect. In the event the claimant makes a timely appeal of this decision and the decision is reversed by the Employment Appeal Board, there is sufficient evidence in the record upon which to base a decision on the merits without need for further hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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