

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE A HENDERSON**  
Claimant

**APPEAL NO. 13A-UI-00844-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 11/11/12  
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:**

Michelle Henderson filed an appeal from the December 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 21, 2013. Ms. Henderson participated personally and was represented by attorney Bruce Stoltze, Jr. Mr. Stoltze presented testimony through Ms. Henderson and through Jamie Reed, Office Manager and Legal Assistant. Margaret Barnes of Equifax Workforce Solutions represented the employer. Brandon Pohlman was available to provide testimony on behalf of the employer, but was not called to testify. Exhibits D-1 and D-2 were received into evidence.

**ISSUES:**

Whether Ms. Henderson's appeal was a timely appeal.

Whether there is good cause to treat Ms. Henderson's appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 4, 2012, Iowa Workforce Development mailed a copy of the December 4, 2012, reference 01 decision to Michelle Henderson's last-known address of record. The decision denied benefits. Ms. Henderson received the decision on or about December 7, 2012. The decision contained a warning that the decision would become final unless an appeal was postmarked by December 14, 2012 or received by the Appeals Section by that date.

On December 12 or 13, Ms. Henderson contacted the law office of attorney Bruce Stoltze, Jr., for assistance with the matter. On December 14, 2012, Mr. Stoltze drafted an appeal letter and directed Jamie Reed, Office Manager and Legal Assistant, to fax the appeal to the Appeals Section that day. Between 2:30 p.m. and 3:00 p.m. on December 14, Ms. Reed attempted to fax the appeal to the Appeals Section. The law office had received and installed a new fax machine. Ms. Reed did not receive confirmation from the fax machine, by means of a printed fax confirmation sheet or otherwise, that the appeal had been successfully transmitted to the

Appeals Section. The Appeals Section did not receive an appeal from Ms. Henderson or from Mr. Stoltze's law office on December 14, 2012.

On January 24, 2013, when Mr. Stoltze had not received an appeal hearing notice, he directed Ms. Reed to inquire with the Appeals Section about the status of Ms. Henderson's appeal. Ms. Reed telephoned the Appeals Section and was advised that no appeal had been received and that she should resubmit the appeal. On January 24, 2013, Ms. Reed faxed four pages of appeal materials to the Appeals Section. Those four pages included a two-page appeal letter and fax cover sheet, both dated December 14, 2012, along with an additional fax cover sheet, dated January 24, 2013.

## **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 weight of the evidence indicates that the appeal was filed on January 24, 2013, the day the Appeals Section received the appeal by fax. The weight of the evidence indicates that the Appeals Section did not receive an appeal from the December 4, 2012, reference 01 decision prior to January 24, 2013.

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. Ms. Henderson received the decision on December 7, 2012. At that point, Ms. Henderson still had a week in which 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 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). Instead, the weight of the evidence indicates the appeal was not successfully transmitted to the Appeals Section on December 14, 2012. There was no fax machine confirmation and no log sheet to indicate successful transmission. If the appeal had been received, the appeal would have been docketed and a hearing notice would have been issued.

Because 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. In other words, there is no legal jurisdiction to 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 December 4, 2012, reference 01, decision is affirmed. The claimant's appeal was not timely, and the decision of the representative that denied benefits remains in effect.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs