

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TIMOTHY A OXLEY
Claimant

APPEAL NO. 19A-UI-02688-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/11/18
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Timothy Oxley filed an appeal from the March 4, 2019, reference 03, decision that denied benefits for the week of February 10-16, 2019, based on the deputy's conclusion that the claimant did not meet the able and available requirement during that week. After due notice was issued, a hearing was held on April 17, 2019. Mr. Oxley participated. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-02689-JTT. Exhibit A and Department Exhibits D-1 through D-7 were received into evidence.

ISSUES:

Whether there is good cause to treat Mr. Oxley's late appeal from the March 4, 2019, reference 03, decision as a timely appeal.

Whether Mr. Oxley was able to work and available for work during the benefit week that ended February 16, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established an original claim for benefits that was effective November 11, 2018 and an additional claim for benefits that was effective January 27, 2019. The claimant made a weekly claim for the week that ended February 16, 2019 and received benefits for that week. The claimant made a mistake on the weekly claim and answered that he was not able to work and available for work. The claimant had in fact made multiple job contacts that week, was physically and mentally able to work, and was seeking new employment.

On March 4, 2019, Iowa Workforce Development mailed a copy of the reference 03 decision to Mr. Oxley. Mr. Oxley received the decision in a timely manner at the same time he received two other decisions. The reference 03 decision denied benefits for the week of February 10-16,

2019, based on the deputy's conclusion that the claimant did not meet the able and available requirement during that week. The reference 03 decision provided a March 14, 2019 deadline for appeal. On March 7, 2019, Mr. Oxley participated in a fact-finding interview regarding whether he was able to work and available for work. Through that contact with the Agency, Mr. Oxley was led to believe that the issues regarding whether he was able to work and available for work had been addressed and resolved. Accordingly, Mr. Oxley did not file an appeal from the March 4, 2018, reference 03, decision by the March 14, 2019 appeal deadline. Mr. Oxley discovered his error when he checked his bank account and learned that benefits were not being deposited in the account. On March 29, 2019, Mr. Oxley submitted an online appeal. The Appeals Bureau received the appeal the 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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(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 Mr. Oxley did have a reasonable opportunity to file an appeal by the March 14, 2019 appeal deadline, but that Iowa Workforce Development significantly contributed to the late filing of the appeal. The weight of the evidence establishes that Iowa Workforce Development significantly contributed to the confusion that caused the appeal to be filed late. There is good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The weight of the evidence establishes that Mr. Oxley was indeed able to work, available for work, and actively and earnestly engaged in a search for new employment during the week that ended February 16, 2019. Mr. Oxley merely made a mistake on his weekly claim. Mr. Oxley is eligible for benefits for the week that ended February 16, 2019, provided he meets all other eligibility requirements.

DECISION:

The March 4, 2019, reference 03, decision is reversed. The claimant's appeal was timely. The claimant met the able and available requirements during the week that ended February 16, 2019 and is eligible for benefits for that week provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs