

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL T SORENSEN
Claimant

APPEAL NO. 15A-UI-03023-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS INC
Employer

OC: 03/30/14
Claimant: Appellant (1)

Iowa Code Section 96.5(3) – Refusal of Suitable Work
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Michael Sorensen filed an appeal from the February 24, 2015, reference 05, decision that disqualified him for benefits, based on an Agency conclusion that he had refused suitable work without good cause on February 6, 2015. After due notice was issued, a hearing was held on April 7, 2015. Mr. Sorensen participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal No. 15A-UI-03024-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A and Department Exhibit D-1 into evidence.

ISSUES:

Whether the appeal from the February 24, 2015, reference 05, disqualification decision 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 February 24, 2015, Iowa Workforce Development mailed a copy of the February 24, 2015, reference 05, decision to Michael Sorensen at his last-known address of record. The reference 05 decision disqualified him for benefits, based on an Agency conclusion that he had refused suitable work without good cause on February 6, 2015. Mr. Sorensen received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked by March 6, 2015 or received by the Workforce Development Appeals by that date. Mr. Sorensen did not immediately respond to the February 24, 2015, reference 05, decision when he received it and did not take any steps to report respond to the decision until he received the February 27, 2015, reference 06, decision that said he was overpaid \$758 for two weeks between February 1, 2015 and February 14, 2015; based on the decision that disqualified him for refusing work. Mr. Sorensen received the overpayment decision on March 1, 2015. On March 6, 2015, Mr. Sorensen's wife typed an

appeal letter for him. Mr. Sorensen then took the typed appeal to the post office and deposited it in a mail receptacle after the last mail pickup on March 6, 2015. The appeal was postmarked March 7, 2015. The appeal section received the appeal on March 9, 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 Mr. Sorensen had a reasonable opportunity to file a timely appeal. Mr. Sorensen had received the disqualification decision prior to receiving the later overpayment decision on March 1, 2015. At the time Mr. Sorensen received the overpayment decision, he still had five days in which to file a timely appeal from the disqualification decision that had prompted the overpayment decision. Mr. Sorensen delegated responsibility for drafting his appeal to his spouse. The appeal from the disqualification decision was not drafted until the day the appeal was due. Mr. Sorensen then delivered the appeal to the post office after the last mail pickup of the day. When the appeal is mailed and the appeal is delivered to the post office after the last mail pick up the day and is postmarked after the appeal deadline, the appeal is untimely. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). Under the Iowa Court of Appeals ruling in the cited case, Mr. Sorensen's appeal from the February 24, 2015, disqualification decision was untimely.

Iowa Workforce Development did not make the appeal late. The United States Postal Service did not make the appeal late. What made the appeal late was Mr. Sorensen's delay in drafting the appeal and delivering the appeal to the Postal Service so the appeal could be postmarked by the appeal deadline. There is not good cause under the law 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. Sorensen has failed to preserve his right to challenge the disqualification decision and the administrative law judge lacks jurisdiction to disturb the disqualification 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 February 24, 2015, reference 05, decision is affirmed. The appeal in this case was not timely. The decision, that disqualified the claimant for benefits based on the February 6, 2015 work refusal, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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