

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENT R JOHNSON
Claimant

APPEAL NO. 09A-UI-10192-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NID INC
Employer

OC: 06/08/08
Claimant: Appellant (1)

Iowa Code Section 96.5(1) - Voluntary Quit
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Kent Johnson filed an appeal from the May 29, 2009, reference 03, decision that denied benefits in connection with an August 1, 2008 separation from NID, Inc. After due notice was issued, a hearing was held by telephone conference call on July 31, 2009. Mr. Johnson participated. Stephanie Gardner, Bookkeeper, represented the employer and presented additional testimony through Aaron Boyenga, Shop Manager, and Jeremy Gouge, Operations Manager. The hearing in this matter was consolidated with the hearing an Appeal Number 09A-UI-09444-JTT. Department Exhibits D-1, D-2, and D-3 were received into evidence.

ISSUE:

Whether there is a good cause to deem timely Mr. Johnson's late appeal from the May 29, 2009, reference 03.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kent Johnson established an original claim for benefits that was effective June 8 2008 period. On May 29, 2009, Workforce Development mailed a copy of the reference 03, decision to Mr. Johnson's last-known address of record. The decision was based on the June 8, 2008 original claim date. The decision denied benefits in connection with an August 1, 2008 separation from employer NID, Inc. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 8, 2009. Mr. Johnson received the decision in a timely manner, prior to the deadline for appeal. Mr. Johnson did not take any immediate steps to file an appeal from the May 29, 2009, reference 03 decision.

Mr. Johnson established a new "original claim" for benefits that was effective June 7, 2009.

On June 15, 2009, Mr. Johnson went to the Mason City Workforce Development Center and spoke with a Workforce Development Representative about the status of his application for benefits. The Workforce Development Representative told Mr. Johnson that the employer had challenged his claim for benefits. Mr. Johnson did not discuss with the Workforce Development

Representative his receipt of the May 29, 2009, reference 03 decision that denied benefits and did not discuss filing an appeal from that decision.

On June 17, 2009, Workforce Development mailed a copy of a reference 02 decision to Mr. Johnson's address of record. This decision was based on the June 7, 2009 original claim date. This decision also denied benefits. This decision indicated that a decision on the August 1, 2008 separation from NID, Inc. had already entered on a prior claim and that the prior decision remained in effect. The June 17, 2009, reference 02 decision contained a June 27, 2009 deadline for appeal. Mr. Johnson received this decision in a timely manner, prior to the deadline for appeal.

On June 24, 2009, Mr. Johnson returned to the Mason City Workforce Development Center. While there, Mr. Johnson obtained assistance in preparing an appeal from both adverse decisions. Mr. Johnson executed an appeal form and delivered the completed appeal form to the Workforce Development Center staff, who forwarded the appeal to the Appeals Section. The Appeals Section received Mr. Johnson's appeal on July 1, 2009.

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). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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).

This matter concerns Mr. Johnson's appeal from the May 29, 2009, reference 03 decision based on the June 8, 2008 original claim date. The deadline for appealing that decision was June 8, 2009. Mr. Johnson did not make his initial contact with the Mason City Workforce Development Center until a week after that deadline had expired. Mr. Johnson filed his appeal on June 24, 2009, when he delivered the completed appeal to the Mason City Workforce Development Center staff. The appeal was filed 16 days beyond the appeal deadline.

The evidence in the record establishes that more than ten calendar days elapsed between the May 29, 2009 mailing date and June 24, 2009, the date the 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 from the May 29, 2009, reference 03 decision, but failed to do so.

The administrative law judge concludes that failure to file a timely appeal from the May 29, 2009, reference 03 decision within the time prescribed by the Iowa Employment Security Law was not due to Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes 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 Agency representative's May 29, 2009, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision denying benefits in connection with the August 1, 2008 separation from NID, Inc. remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs