

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON A MORET
Claimant

APPEAL NO. 16A-UI-00545-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANKEN CUSTOM INC
Employer

OC: 12/13/15
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Layoff
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the January 4, 2016, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been laid off effective December 30, 2014. After due notice was issued, a hearing was held on February 4, 2016. Claimant Brandon Moret did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Jake Franken represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One and Department Exhibit D-1 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 January 4, 2016, Iowa Workforce Development mailed a copy of the January 4, 2016, reference 03, decision to Franken Custom, Inc., at the employer's last known address of record. The decision allowed benefits to claimant Brandon Moret provided he was otherwise eligible and held the employer's account could be charged for benefits, based on an Agency conclusion that the employer had laid off the claimant effective December 30, 2014. The decision stated that an appeal from the decision must be postmarked by January 14, 2016 or received by the Appeals Bureau by that date. The decision provided clear and concise instructions for filing an appeal by mail, online, or by fax. The decision arrived at the employer's address of record in a timely manner prior to the deadline for appeal. The business owner, Jake Franken, had traveled out of town for a week or more without delegating responsibility for opening or responding to time-sensitive mail during his absence from the workplace. Mr. Franken returned to the workplace on Thursday, January 14, 2016. On Friday, January 15, 2016, Mr. Franken contacted the telephone number referenced on the January 4, 2016, reference 03, decision and

was directed to the Workforce Development website. On January 15, 2016 at 10:51 a.m., Mr. Franken used the Agency website to file an online appeal.

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 employer's appeal was filed on January 15, 2016 at the time Mr. Franken submitted the online appeal.

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 evidence in the record establishes that January 4, 2016, reference 03, arrived at the employer's address of record in time to provide the employer a reasonable opportunity to file a timely appeal. The employer had traveled out of town for an extended period without arranging for someone else to handle time-sensitive mail that arrived at the employer's office during Mr. Franken's absence. A reasonable employer would have made appropriate arrangements for dealing with the mail that arrived in the employer's absence. In this instance, the delay in filing the appeal was attributable to the employer. At the time the employer filed the appeal online, Mr. Franken indicated that he had "received" or reviewed the decision on January 14, 2016. That would mean that Mr. Franken had the decision in hand on the day the appeal was due. Because the decision contained clear and concise instructions to file an appeal online, by fax, or by mail, even at that late date, Mr. Franken still had time to file a timely appeal by at least two of those three methods.

Because the late filing of the appeal was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service, there is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the employer has failed to preserve its right to challenge the lower decision and the administrative law judge lacks jurisdiction to disturb the lower 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 January 4, 2016, reference 03, decision is affirmed. The employer's appeal was untimely. The decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the 2014 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css