

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DOUGLAS A MARSHALL
BUILDING 68
THAYER AVE
DES MOINES IA 50315**

**QUEBECOR WORLD WAUKEE INC
c/o UNEMPLOYMENT SERVICES INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-05699-RT
OC: 03-26-06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Douglas A. Marshall, filed an appeal from an unemployment insurance decision dated May 2, 2006, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on June 19, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Brenda Befonen, Human Resources Manager, and Stephen Bishop, Manufacturing Manager, participated in the hearing for the employer, Quebecor World Waukeel, Inc. The employer was represented by Mara Benjamin of Unemployment Services, Inc. Department Exhibit One was admitted into evidence. The administrative law judge takes

official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on May 2, 2006, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate he was discharged from work on March 27, 2006 for repeated tardiness in reporting to work after being warned. This decision was sent on the same date to the parties. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by May 12, 2006. However, the claimant's appeal, as shown at Department Exhibit One, was left with a local Workforce Development office on May 30, 2006 making the appeal 18 days late. The decision from which the claimant seeks to appeal was sent to a different address than is shown on the claimant's appeal. However, on the claimant's appeal the claimant indicates that the date he received the decision is unknown. The claimant did not participate in the hearing to provide reasons why his appeal was late.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The administrative law judge concludes that the claimant's appeal was not timely and the claimant has not demonstrated good cause for the delay in the filing of his appeal and, as a consequence, the administrative law judge has no jurisdiction to reach the remaining issue.

2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.

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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- a. If transmitted via the United States postal service, 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 is 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.
- b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

- (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.
 - a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
 - b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
 - c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.
 - d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that his appeal was timely or that he had good cause for the delay in the filing of his appeal. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence either that his appeal was timely or that he had good cause for a delay in the filing of his appeal. As shown at Department Exhibit One, which is the claimant's appeal, and as set out in the Findings of Fact, the claimant's appeal was 18 days late. The claimant did not participate in the hearing and provide evidence as to why the claimant's appeal was late. It is true that the decision from which the claimant seeks to appeal was sent to the claimant at a different address than the address shown on the claimant's appeal. However, on the claimant's appeal the claimant indicates that the date he received the decision was unknown. This does indicate that the claimant received the decision but just does not know when. The claimant's appeal is silent as to why there was a delay in the filing of his appeal. The claimant did not participate in the hearing and provide any reasons why his appeal was late. There is no evidence in the record that the delay in the filing of the claimant's appeal was due to any error or misinformation on the part of Iowa Workforce Development or to delay or other action of the U. S. Postal Service. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated May 2, 2006, reference 01, is not timely and the claimant has not demonstrated good cause for the delay in the filing of his appeal. Therefore, the administrative law judge concludes that he lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. The administrative law judge further concludes that the representative's decision of May 2, 2006, reference 01, should remain in full force and effect.

DECISION:

The representative's decision of May 2, 2006, reference 01, is to remain in full force and effect. The claimant; Douglas A. Marshall, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

kkf/pjs