

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARNITA L WELLS**

Claimant

**APPEAL NO. 16A-UI-11321-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AIRLITE PLASTICS CO**

Employer

**OC: 05/08/16**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Darnita Wells filed a late appeal from the June 22, 2016, reference 04, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Wells had voluntarily quit on April 25, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 3, 2016. Ms. Wells participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-11322-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the agency administrative records: the June 22, 2016, reference 04, decision, the July 6, 2016, reference 05, decision and the agency's record of benefits disbursed to the claimant.

**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: Darnita Wells established a claim for benefits that was effective May 8, 2016. At the time Ms. Wells established her claim, she provided an address that contained an erroneous street name: 4736 Flower Avenue, Omaha, Nebraska 68104. There is no such street name in Omaha, Nebraska. The correct address was and is 4736 Fowler Avenue, Omaha, Nebraska 68104. Despite the erroneous street name, the United States Postal Service was able to deliver correspondence from Iowa Workforce Development to Ms. Wells' correct address.

On June 22, 2016, Iowa Workforce Development mailed the June 22, 2016, reference 04, decision to Ms. Wells at her address of record. The decision disqualified Ms. Wells for benefits and relieved the employer account of Airlite Plastics Company of liability for benefits, based on an agency conclusion that Ms. Wells had voluntarily quit on April 25, 2016 without good cause attributable to the employer. The reference 04 decision stated that appeal from the decision must be postmarked by July 2, 2016 or be received by the Appeals Section by that date. The

decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. July 2, 2016 was a Saturday. The following Monday was the 4th of July holiday. The next working day after July 2, 2016 was Tuesday, July 5, 2016. The weight of the evidence establishes that the June 22, 2016, reference 04, decision was delivered to Ms. Wells' address of record in a timely manner, prior to the deadline for appeal.

On July 6, 2016, Iowa Workforce Development mailed the July 6, 2016, reference 05, decision to Ms. Wells at her address of record. The decision held that Ms. Wells had been overpaid \$1,880.00 in benefits for the five weeks between May 8, 2016 and June 11, 2016, based on the earlier decision that disqualified her for benefits in connection with her April 25, 2016 separation from Airlite Plastics Company. The reference 05 decision stated that appeal from the decision must be postmarked by July 16, 2016 or be received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. July 16, 2016 was a Saturday. The next working day after July 16, 2016 was Monday, July 18, 2016. The weight of the evidence establishes that the July 6, 2016, reference 05, decision was delivered to Ms. Wells' address of record in a timely manner, prior to the deadline for appeal.

Ms. Wells was incarcerated in the Douglas County Jail at the time the reference 04 and reference 05 decisions were delivered to her address of record. On or about June 7, 2016, Ms. Wells was sentenced in connection with assault conviction and ordered to serve 180 days in jail. While Ms. Wells was incarcerated, Ms. Wells' mother collected the mail from Ms. Wells' residence. While Ms. Wells was incarcerated someone else continued to make weekly claims on Ms. Wells' unemployment insurance claim. Ms. Wells' mother kept Ms. Wells' mail for Ms. Wells at the mother's home. On or about September 15, 2016, Ms. Wells was granted earlier release from the Douglas County Jail. Though Ms. Wells knew her mother was holding her mail for her, Ms. Wells elected not to collect the mail that her mother had been keeping for her. The weight of the evidence indicates that Ms. Wells' accumulated mail included the June 22, 2016, reference 04, disqualification decision and the July 6, 2016, reference 05, overpayment decision.

On or about October 1, 2016, Ms. Wells spoke to an Iowa Workforce Development representative about an Overpayment Statement she had recently received in the mail. The Workforce Development representative advised Ms. Wells that it would be necessary to file an appeal.

On October 5, 2016, Ms. Wells accessed the Workforce Development website and completed an online appeal.

#### **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).

Ms. Wells' appeal from both decisions was filed on October 5, 2016, when she completed 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 record shows that Ms. Wells did not have a reasonable opportunity to file an appeal from either decision by the appeal deadline. The question then becomes whether Ms. Wells unreasonably delayed in filing her appeal from one or both decisions. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

The weight of the evidence establishes an untimely appeal from both decisions. The weight of the evidence establishes that Ms. Wells did indeed unreasonably delay filing an appeal from both decisions. Ms. Wells made herself unavailable to immediately receive and respond to the decisions by committing a criminal offense that result in her extended incarceration. Ms. Wells was fully aware during her extended incarceration that she had filed an unemployment insurance claim, that she had received unemployment insurance benefits, and that she was obligated to maintain appropriate contact with Iowa Workforce Development. Ms. Wells was aware, during her extended incarceration, that her mother was collecting and holding her mail. Upon her release from incarceration on or about September 15, 2016, Ms. Wells unreasonably elected not to collect her accumulated mail from her mother. Only after Workforce Development sent Ms. Wells an Overpayment Statement demanding repayment of benefits did Ms. Wells make contact with the agency. Ms. Wells then further delayed the filing of her appeal from both decisions to October 5, 2016. Ms. Wells never did collect her mail from her mother.

The unreasonable delay in filing the appeal was attributable to Ms. Wells and not attributable to Iowa Workforce Development or 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 disturb the lower decision. See, Beardsley v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the June 22, 2016, reference 04, decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the April 25, 2016 separation, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs