

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES A LEAF
Claimant

APPEAL NO. 20A-UI-00932-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 12/29/19
Claimant: Appellant (1)

Iowa Code Section 95.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

James Leaf filed a late appeal from the January 17, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Leaf was discharged on December 23, 2019 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on February 17, 2020. Mr. Leaf participated. Angel Waters represented the employer. Exhibit A and Department Exhibit D-1 were into evidence.

ISSUE:

Whether there is good cause to treat the claimant's late appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 17, 2020, Iowa Workforce Development mailed the January 17, 2020, reference 01, decision to claimant James Leaf's last-known address of record. The decision was mailed from Des Moines and Mr. Leaf's address of record is in Des Moines. The January 17, 2020, reference 01, decision disqualified Mr. Leaf for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Leaf was discharged on December 23, 2019 for excessive unexcused absenteeism. The decision stated that an appeal from the decision must be postmarked by January 27, 2020 or be received by the Appeals Bureau by that date. The January 17, 2020, reference 01, arrived at Mr. Leaf's address of record in a timely manner, prior to the appeal deadline. Mr. Leaf does not check his mailbox on a regular basis and did not promptly collect the January 17, 2020, reference 01, decision from his mailbox. January 18, 2020 was a Saturday. January 19, 2020 was a Sunday. January 20, 2020 was a Monday and a legal holiday, Martin Luther King, Jr. Day. January 21, 2020 was a Tuesday. On Wednesday, January 22, 2020, Mr. Leaf traveled to Arizona without first checking his mailbox. On or about January 27, 2020, Mr. Leaf returned to Des Moines. At some point between January 27, 2020 and January 31, 2020, Mr. Leaf reviewed the January 17, 2020, reference 01, decision. On January 31, 2020, Mr. Leaf filed an online appeal from the January 17, 2020, reference 01, decision. The Appeals Bureau received the appeal on January 31, 2020.

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(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 weight of the evidence in the record establishes an untimely appeal. Mr. Leaf is an unreliable historian concerning dates. The decision that was mailed from Des Moines on Friday, January 17, 2020 to Mr. Leaf's address in Des Moines most likely landed in Mr. Leaf's mailbox on Saturday, January 18, 2020. The next mail delivery day was Tuesday, January 21, 2020. There is no evidence in the record to suggest that the decision was delivered to Mr. Leaf's mailbox any later than Tuesday, January 21, 2020. On Wednesday, January 22, 2020, Mr. Leaf left town without first checking his mailbox. Mr. Leaf provided inconsistent and unreliable testimony regarding the date on which he returned to Des Moines following his trip to Arizona. The weight of the evidence indicates that Mr. Leaf returned to Des Moines on January 27, 2020. The weight of the evidence indicates that Mr. Leaf reviewed the decision at some point between January 27 and 31, 2020 and then filed his late appeal on January 31, 2020. The weight of the evidence establishes that Mr. Leaf did have a reasonable opportunity to file a timely appeal by the January 27, 2020 appeal deadline, but denied himself that opportunity by unreasonably failing to check his mailbox in a timely manner and prior to leaving town, by unreasonably delaying his review the decision, and by delaying the filing of his appeal to January 31, 2020. Because Mr. Leaf had a reasonable opportunity to file a timely appeal and because the late filing of the appeal is attributable to Mr. Leaf, and not attributable to Iowa Workforce Development or the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the January 17, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Leaf was discharged on December 23, 2019 for excessive unexcused absenteeism. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the event this decision regarding timeliness of the appeal is reversed upon further appeal, there is sufficient evidence in the record for entry of a decision regarding the employment separation issues without need for further hearing.

DECISION:

The January 17, 2020, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 23, 2019 for excessive unexcused absenteeism, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn