

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL P LYNCH
Claimant

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

APPEAL NO. 20A-UI-05086-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a late appeal from the May 14, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 27, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on July 2, 2020. Claimant Daniel Patrick Lynch participated personally and was represented by attorney Eric Mail. Ted Valencia of Employers Unity represented the employer and presented testimony through Amanda Nowasell. Additional witnesses Jason Spies, Carol Power and Jen Pfaff were available for the hearing, but did not testify. Exhibits 1 through 10 and Department Exhibit D-1 were received into evidence on the timeliness of appeal issue.

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: The employer is Kimberly, Chrysler Plymouth, Inc. The employer's representative of record is Employers Unity, L.L.C. The employer's last-known address of record for unemployment insurance matters is Employers Unity's post office box in Denver, Colorado. On May 14, 2020, Iowa Workforce Development mailed the May 14, 2020, reference 01, decision to the employer's last-known address of record. The decision allowed benefits to the claimant, provided he met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 27, 2020 for no disqualifying reason. The decision stated that an appeal from the decision must be postmarked by May 24, 2020 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 24, 2020 was a Sunday. May 25, 2020 was a legal holiday, Memorial Day. The next working day was Tuesday, May 26, 2020. The decision included clear and concise instructions for filing an appeal online, by fax, or

by mail. The employer's agent, Employers Unity, received the decision in a timely manner on May 18, 2020. An Employers Unity representative communicated with the employer regarding whether the employer wished to appeal the decision. On May 22, 2020, the employer communicated to Employers Unity its desire to appeal the decision. The employer also provided supporting documentation to Employers Unity on May 22, 2020. Employers Unity took no further action on the matter until June 3, 2020, when an Employers Unity representative drafted an appeal letter and faxed the appeal letter and supporting documents to the Appeals Bureau. The Appeals Bureau received the faxed appeal on June 3, 2020. In the appeal letter, the Employers Unity representative cited the volume of claims handled by Employers Unity as the basis for the late filing. In the appeal letter, the Employers Unity representative erroneously referenced an untimely response from the employer as another basis for the late appeal. Employers Unity is now part of Equifax Workforce Solutions, which provided Employers Unity assistance in processing a substantially increased volume of claims in the context of the COVID-19 pandemic.

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 employer's appeal was filed on June 3, 2020, when the Appeals Bureau received the faxed 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). One 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 an untimely appeal from the May 14, 2020, reference 01, decision. Despite the number of claims being handled by Employers Unity, the employer and its agent had a reasonable opportunity to file an appeal by the extended May 26, 2020 deadline. The employer's agent received the decision in a timely manner. Indeed, the employer's agent and the employer had eight days, more than a week, from receipt of the decision to the extended appeal deadline. Once the employer communicated its decision to appeal the May 14 decision, the employer and its agent still had four days in which to file an appeal by the extended appeal deadline. At the hearing, Employers Unity attempted to spin the appeals process in to some complex task that the employer was not "trained" to accomplish. However, filing an appeal is a simple process that inexperienced, unrepresented parties accomplish on a regular basis. Filing an appeal from a deputy's decision is by design a streamlined process that can be accomplished at the Iowa Workforce Development website in a matter of a few minutes. Some employers simply write a one-sentence appeal statement on the decision they are appealing and fax that document to the Appeals Bureau, a process that takes minimal effort, but gets the job done. In this instance, we have a well-resourced, well-experienced employer representative that could have and should have taken prompt action to file an appeal by the appeal deadline. Employers Unity indicated at the hearing that by design it waits to the appeal deadline date to file an appeal. In this instance, Employers Unity unreasonably waited an additional 12 days after the employer's communication, a full eight days after the appeal deadline, to file the appeal. As the employer elected to use Employers Unity for unemployment insurance matters, Employers Unity's failure to file a timely appeal is the employer's failure to file a timely appeal. Because the late filing of the appeal was not attributable to Iowa Workforce Development or to 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 employer has failed to preserve its right to challenge the May 14, 2020, reference 01, decision and the administrative law judge lacks jurisdiction to disturb the May 14, 2020, reference 01, 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 employer's appeal was untimely. The May 14, 2020, reference 01, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 27, 2020 for no disqualifying reason, remains in effect.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

jet/scn