

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERWIN SANTOS

Claimant

APPEAL NO. 09A-UI-15512-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 04/19/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Erwin Santos filed an appeal from the May 19, 2009, reference 01, decision that denied benefits effective April 19, 2009. After due notice was issued, a hearing was held by telephone conference call on November 17, 2009. Mr. Santos participated. Jacque Finkral, Retention Coordinator, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-15513-JTT. Department Exhibits D-1, D-2, and D-3 were received into evidence. Exhibits One, Two and Three were received into evidence. The administrative law judge took official notice of the October 27, 2009, reference 03 decision that allowed benefits effective the week ending October 17, 2009, after the claimant requalified for benefits. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether there is good cause to deem timely Mr. Santos' late appeal from the May 19, 2009, reference 01 decision.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Erwin Santos established a claim for unemployment insurance benefits that was effective April 19, 2009. On May 18, 2009, Mr. Santos participated in a telephonic fact-finding interview that addressed his separation from the employment. On May 19, 2009, Iowa Workforce Development mailed a copy of the reference 01 decision to Mr. Santos' last known address of record. A copy of the decision went to the employer at the same time. The decision denied benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 29, 2009. The employer received its copy of the decision on May 21, 2009. The weight of the evidence indicates that the reference 01 decision was received at Mr. Santos' address of record in a timely manner.

Mr. Santos started new full-time employment in June 2009 and continued in the new employment until October 5, 2009.

On August 3, 2009, Iowa Workforce Development mailed a copy of the reference 02 overpayment decision to Mr. Santos' last known address of record. The decision said Mr. Santos had been overpaid \$696.00 in benefits for the three-week period of April 19, 2009 through May 9, 2009 as a result of the earlier decision that disqualified him for benefits. The weight of the evidence indicates that the reference 02 decision was received at Mr. Santos' address of record in a timely manner.

Mr. Santos' address of record is the residence he shares with his spouse: 1234 6th Street N.W., Cedar Rapids, IA 52405-2534. Toward the end of May 2009, Mr. Santos ceased residing at the residence and commenced residing with his mother-in-law at a different address. Mr. Santos continued to reside with his mother-in-law until the beginning of October 2009, when he moved back into the residence he shares with his spouse. While Mr. Santos was separated from his spouse, he continued to have his mail directed to the family residence. Mr. Santos did not contact Iowa Workforce Development to update his address of record. Mr. Santos did not contact the United States Postal Service to have his mail directed to a different mailing address.

Toward the end of September 2009, Mr. Santos spoke to his wife and learned that his wife had received the decisions that first denied benefits and then required Mr. Santos to repay benefits. Mr. Santos was unable to locate the decisions at the family home and believes his spouse may have thrown the decisions in the trash. Though this discussion took place at the end of September, Mr. Santos elected to wait until he filed a new application for unemployment insurance benefits to take any steps to appeal from the May 19, 2009, reference 01 or the August 3, 2009, reference 02 overpayment decision.

On October 14, 2009, Mr. Santos went to the Cedar Rapids Workforce Development Center, completed an appeal form, and left the appeal form with the staff. The Appeals Section received the appeal on October 15, 2009.

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, 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 any means other than mail 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).

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 evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the May 19, 2009, reference 01 disqualification decision and the date Mr. Santos appealed from that decision. Indeed, the evidence indicates a delay of almost five months. 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 Mr. Santos would have had a reasonable opportunity to file a timely appeal from the May 19, 2009, reference 01 decision if he had taken reasonable and appropriate steps to receive and respond to his mail. The evidence indicates that the reference 01 decision was received at the correct address of record in a timely manner at or about the time Mr. Santos was in the process of separating from his spouse. Mr. Santos was on notice that the decision would be arriving any day. Mr. Santos failed to update his mailing address with either Iowa Workforce Development or the Postal Service. Mr. Santos failed to take additional steps to follow up on the decision he was expecting. Mr. Santos returned to work shortly thereafter and this probably explains why he took no further action at that time.

The record further indicates that Mr. Santos unreasonably delayed filing an appeal even after the discussion with his spouse toward the end of September. Mr. Santos waited at least another 14 days to take steps to file an appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of 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 make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's May 19, 2009, reference 01, decision is affirmed. The appeal in this case was not timely, and the disqualification decision of the representative remains in effect.

In the event this decision is reversed on further appeal on the timeliness issue, there is sufficient evidence in the record for entry of a decision on the merits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs