

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L DEMORET**  
Claimant

**APPEAL NO. 16A-UI-10344-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/12/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able and Available  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Michael Demoret filed an appeal from the August 22, 2016, reference 05, decision that denied benefits for the week that ended August 6, 2016, based on an agency conclusion that Mr. Demoret did not meet the able and available requirements for that week. After due notice was issued, a hearing was held on October 6, 2016. Mr. Demoret participated. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-10345-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the August 22, 2016, reference 05, decision.

**ISSUE:**

Whether the appeal from the August 22, 2016, reference 05, decision 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: Michael Demoret established an original claim for benefits that was effective June 12, 2016. On August 22, 2016, Workforce Development mailed the August 22, 2016, reference 05, decision to Mr. Demoret at his last-known address of record. The reference 05 decision denied benefits for the week that ended August 6, 2016, based on an agency conclusion that Mr. Demoret did not meet the able and available requirements for that week. The decision stated that an appeal from the decision must be postmarked or received by the Appeals Section by September 1, 2016. Mr. Demoret received the reference 05 decision in a timely manner, prior to the deadline for appeal, but did not take steps to file an appeal from the decision by the September 1, 2016 appeal deadline.

On September 19, 2016, Workforce Development mailed the September 19, 2016, reference 06, decision to Mr. Demoret at his last-known address of record. The reference 06 decision held that Mr. Demoret had been overpaid \$276.00 in benefits for the week that ended August 6, 2016, based on the August 22, 2016 decision that disqualified Mr. Demoret for

benefits for not being able and available for work. The reference 06 decision had a September 29, 2016 appeal deadline.

On September 23, 2016, Mr. Demoret went to the Des Moines Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the Workforce Development staff. The Appeals Bureau received the appeal form the same day. The Appeals Bureau treated the appeal as an appeal from both the overpayment decision and the disqualification decision.

## **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).

Mr. Demoret's appeal was filed on September 23, 2016, when he hand delivered his appeal to the Workforce Development staff.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the August 22, 2016, reference 05, decision that denied benefits for the week ending August 6, 2016 and the September 23, 2016 filing of the appeal. 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. Demoret did have a reasonable opportunity to file a timely appeal from the August 22, 2016, reference 05, decision that denied benefits for the week that ended August 6, 2016, but that Mr. Demoret delaying filing the appeal until after the appeal deadline had passed. Because the late filing of the appeal was attributable to Mr. Demoret, and not attributable to Iowa Workforce Development or the United States Postal Service, there is not good cause under the law to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the August 22, 2016, reference 05, decision that denied benefits for the week that ended August 6, 2016. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The August 22, 2016, reference 05, decision is affirmed. The claimant's appeal from the decision was untimely. The decision denied benefits for the week that ended August 6, 2016, based on an agency conclusion that the claimant did not meet the able and available requirements for that week, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs