

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON C VALENTI**  
Claimant

**APPEAL NO. 15A-UI-11421-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF DES MOINES PAYROLL DEPT B**  
Employer

**OC: 12/15/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Brandon Valenti filed a late appeal from the October 21, 2014, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. Valenti had been discharged on October 3, 2014 for excessive unexcused absences after being warned. After due notice was issued, a hearing was held on October 28, 2015. Mr. Valenti participated personally and was represented by attorney, James Ballard. Allison Lambert represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-11422-JTT. Exhibits One, Two, and Three and Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUES:**

Whether Mr. Valenti's appeal from the October 21, 2014, reference 02, decision is timely.

Whether there is good cause to treat Mr. Valenti's late appeal from the October 21, 2014, reference 02, decision as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brandon Valenti established an original claim for benefits that was effective December 15, 2013. On October 20, 2014, a Workforce Development claims deputy held a fact-finding interview to address Mr. Valenti's separation from employer City of Des Moines. Mr. Valenti participated in the fact-finding interview and provided a detailed statement concerning his separation from the employment. At the time of the fact-finding interview, the claims deputy advised the parties of their appeal rights in connection with the decision that the claims deputy would be entering.

On October 21, 2014, Iowa Workforce Development mailed a copy of the October 21, 2014, reference 02, decision to the parties at their last-known address of record. Mr. Valenti's address of record and the employer's address of record are both in Des Moines. The employer received its copy of the decision on October 22, 2014. Mr. Valenti most likely received his copy of the same mailing on same date, October 22, 2014. The decision disqualified Mr. Valenti for

benefits and relieved the employer's account of liability for benefits, based on an Agency conclusion that Mr. Valenti had been discharged on October 3, 2014 for excessive unexcused absences after being warned. The decision contained a warning that an appeal from the decision must be postmarked by October 31, 2014 or received by the Appeals Section by that date. Mr. Valenti did not take any steps to file an appeal from the decision prior to the appeal deadline. Mr. Valenti indicates that he was taking Vicodin and a muscle relaxer at the time he received the decision.

Mr. Valenti established a new original claim that was effective September 27, 2015. On October 7, 2015, Workforce Development mailed a copy of the October 7, 2015, reference 01, decision to Mr. Valenti's address of record. On October 14, 2015, Attorney James Ballard faxed an appeal to the Appeals Section. The appeal indicated on its face that it was an appeal from the October 7, 2015, reference 01, decision. The decision disqualified Mr. Valenti for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that a decision on the October 3, 2014 separation had been made on a prior claim and that the prior decision remained in effect. The Appeals Section received the faxed appeal on October 14, 2015 and treated it as an appeal also from the October 21, 2014, reference 02, decision entered in connection with the December 15, 2013 original claim.

#### **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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Valenti's appeal was filed on October 14, 2015, when the Appeals Section 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). In other words, what Mr. Ballard terms "a technicality," the Iowa Supreme Court has held to be an important and binding statute. 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 that Mr. Valenti did have a reasonable opportunity to file a timely appeal. The record of Mr. Valenti's participation in the October 20, 2014 fact-finding does not suggest in the least that Mr. Valenti's mental faculties were impaired at the time of the proceeding. On the contrary, the record of the fact-finding interview shows that Mr. Valenti was able to provide a detailed statement to the claims deputy concerning his separation from the employment. The evidence in the record fails to establish a basis for concluding that Mr. Valenti was suffering from diminished capacity at the time he received the claims deputy's decision two days following the fact-finding interview. The weight of the evidence establishes that Mr. Valenti received the decision in a timely manner and elected not to file an appeal by the October 31, 2014 appeal deadline.

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 indicates that Mr. Valenti gave the matter no further thought from the time he received the decision on October 22, 2014 until he decided to file a new claim for benefits that was effective September 27, 2015. On October 7, 2015, reference 01, decision brought back to Mr. Valenti's attention the disqualifying decision from almost a year earlier. The evidence fails to establish a reasonable basis for Mr. Valenti's delay in filing an appeal from the October 21, 2014, reference 02, decision.

The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law, and the further delay to October 14, 2015, was not due to any Workforce Development. Nor was the delay attributable to error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Because the appeal was not timely filed

pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the October 21, 2014, reference 02, 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 October 21, 2014, reference 02, 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 October 3, 2014 separation, remains in effect.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css