

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADA C KERN**  
Claimant

**APPEAL NO. 11A-UI-10197-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS COMM SCHOOL DIST**  
Employer

**OC: 06/05/11  
Claimant: Appellant (1)**

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Ada Kern filed an appeal from the July 18, 2011, reference 03, decision that denied benefits based on wages from Council Bluffs Community School District. After due notice was issued, a hearing was held on August 29, 2011. Ms. Kern participated. Tom Kuiper of TALX represented the employer. Brandy Gabrick of Council Bluffs Community School District was also available. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether there is good cause to treat Ms. Kern's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 18, 2011, Iowa Workforce Development mailed a copy of the July 18, 2011, reference 03, decision to Ada Kern's last-known address of record. Ms. Kern received the decision in a timely manner on July 22, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 28, 2011. When Ms. Kern received the decision, she telephoned the Council Bluffs Workforce Development Center and left a voice mail. A couple days later, Ms. Kern repeated this. Ms. Kern received a telephone call from a Workforce Development representative seven or eight days after she left her initial message. At that point the appeal deadline had passed. On July 29, 2011, Ms. Kern drafted her appeal. On August 2, 2011, Ms. Kern delivered her appeal to the Council Bluffs Workforce Development Center. The Workforce staff forwarded the appeal by fax to the Appeals Section, which received the appeal on August 2, 2011.

**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 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).

Ms. Kern's appeal was filed on August 2, 2011, the day she delivered it to Workforce Development and the day the Appeals Section received it.

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge finds that Ms. Kern's telephone phone calls to the Workforce Development Center did not constitute reasonable steps to file an appeal in a timely manner. A reasonable person who had not received a return telephone call within a reasonable period would have gone to the Workforce Development Center prior to the appeal deadline to get answers to any questions so and to file a timely appeal. The administrative law judge concludes that the delay in the filing the appeal was not due to agency error or misinformation. 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 July 18, 2011, reference 03, decision is affirmed insofar as it disqualified the claimant for benefits *based on wages from Council Bluffs Community School District* between academic terms. The appeal in this case was not timely, and the decision of the representative remains in effect.

This decision does not disturb the August 4, 2011, reference 04, decision. That decision amended the reference 03 decision only to acknowledge other non-school based wages and to allow benefits based on those non-school based wages. The reference 04 decision did not amend the reference 03 decision insofar as it disqualified the claimant for benefits *based on wages from Council Bluffs Community School District* between academic terms.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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