

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES K GODSEY
Claimant

APPEAL NO. 12A-UI-14427-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA STANDARD INC
Employer

OC: 08/05/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

James Godsey filed an appeal from the September 14, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was started on January 11, 2013. It was necessary to reopen the record to address the timeliness of appeal issue that had previously been missed. The hearing concluded on February 25, 2013. Mr. Godsey participated. Alyce Smolsky of Equifax Workforce Solutions represented the employer and, on January 11, 2013, presented testimony through Karen Vanderpool, Tim Brown and Jade McKeegan. Exhibits One through Five and A were received into evidence on January 11, 2013. Department Exhibit D-1 was received into evidence on February 25, 2013.

ISSUES:

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: On September 14, 2012, Iowa Workforce Development mailed a copy of the September 14, 2012, reference 03 decision to James Godsey's last-known address of record. The decision arrived at Mr. Godsey's address of record in a timely manner, prior to the deadline for appeal. The decision denied benefits. The decision contained a warning that an appeal had to be postmarked by September 24, 2012 or received by the Appeals Section by that date.

Mr. Godsey had been in Missouri at the time of the fact-finding interview that immediately preceded the September 14, 2012 decision. Mr. Godsey was in Missouri to be with an ill family member. Mr. Godsey arrived back home later in September. At that time, the September 14, 2012, reference 03 decision was waiting for Mr. Godsey as part of his accumulated mail. Mr. Godsey did not at that time file an appeal. Mr. Godsey waited to file an appeal until December 10, 2012. On that day, Mr. Godsey drafted his appeal and faxed the appeal to the Appeals Section. The Appeals Section received the appeal that same day.

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).

The appeal in question was filed on December 10, 2012, 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). 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. Godsey did have a reasonable opportunity to file a timely appeal. Mr. Godsey was absent from Iowa, and from his address of record, at the time he participated in the fact-finding interview in mid-September. Mr. Godsey knew at that point that he should be expecting a decision from Workforce Development in the following days. There is no evidence to suggest that the decision was in any manner delayed in reaching Mr. Godsey's address of record. Mr. Godsey cannot say with certainty what day he returned to Iowa, but knows it was within two weeks of the fact-finding interview and that it was in September 2012. Mr. Godsey's failure to file an appeal by the September 24, 2012 deadline was wholly attributable to Mr. Godsey being out of state and not making arrangements for timely attending to his mail despite knowing that an unemployment insurance decision was imminent.

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 Iowa Admin. Code rule 871 IAC 24.35(2)(c).

Even if the administrative law judge had found that Mr. Godsey did not have a reasonable opportunity to file an appeal before the September 24, 2012 deadline, the evidence in the record indicates that Mr. Godsey unreasonably delayed filing an appeal. Mr. Godsey was aware of the adverse decision in September, but did not file an appeal until December.

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 Workforce Development 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. In other words, there is no legal jurisdiction that would allow the administrative law judge to disturb the lower decision that denied benefits. 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 September 14, 2012, reference 03, decision is affirmed. The claimant's appeal was not timely. The decision of the representative that disqualified the claimant for benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs