

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES D MARSH**

Claimant

**APPEAL NO. 17A-UI-04759-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BILLION FT DES MOINES INC**

Employer

**OC: 04/02/17**

**Claimant: Appellant (1)**

Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

James Marsh filed an appeal from the April 20, 2017, reference 01, decision that disqualified him for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that he voluntarily quit on December 13, 2016 without good cause attributable by being absent three consecutive days without notice to the employer. After due notice was issued, a hearing was held on May 23, 2017. Mr. Marsh participated. Scott Kritenbrink represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the April 20, 2017, reference 01, decision.

**ISSUE:**

Whether the appeal was timely or 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 April 20, 2017, Iowa Workforce Development mailed the April 20, 2017, reference 01, decision to James Marsh at his last-known address of record. The decision disqualified Mr. Marsh for unemployment insurance benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Marsh voluntarily quit on December 13, 2016 without good cause attributable by being absent three consecutive days without notice to the employer. The decision stated that an appeal from the decision must be postmarked by April 30, 2017 or be received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. April 30, 2017 was a Sunday. The next working day was Monday, May 1, 2017. The decision contained a phone number that Mr. Marsh could use to contact Workforce Development customer service if he had questions about the decision or the appeals process. The back of the decision contained clear and concise instructions for filing an appeal from the decision. Mr. Marsh received the decision on or before April 22, 2017. Mr. Marsh skimmed the decision. Mr. Marsh did not review the appeal instructions on the back of the decision. Mr. Marsh decided on his own that he needed to go to a Workforce Development office to file an appeal. Mr. Marsh was working Monday through Thursday and elected to delay contact with Workforce Development until Friday, May 5, 2017. On that day,

Mr. Marsh went to the Des Moines Workforce Development Center and completed an appeal form. Mr. Marsh then brought his appeal form to the Workforce Development administrative building at 1000 East Grand Avenue and hand-delivered the appeal to the customer service staff. The Appeals Bureau received the appeal the same day.

## **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. Marsh's appeal was filed on May 5, 2017, when he hand-delivered the appeal to the Workforce Development customer service staff at 1000 East Grand Avenue in Des Moines. 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. Mr. Marsh received the decision by April 22, 2017. At that point, he had nine days in which to file an appeal by extended May 1, 2017 appeal deadline. The appeal instructions were on the April 20, 2017 decision. Those instructions provided Mr. Marsh the option of filing the appeal online, faxing the appeal or mailing the appeal. The decision also contained the customer service number. Mr. Marsh elected to defer action on the matter until May 5, 2017, four days after the appeal deadline had passed.

Mr. Marsh's 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). Accordingly, there is not good cause to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), 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). In other words, because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the April 20, 2017, reference 01, decision and that decision remains in effect.

#### **DECISION:**

The April 20, 2017, reference 01, 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 December 13, 2016 separation, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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