

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOEL T BELL**  
Claimant

**APPEAL NO. 17A-UI-05695-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CNH AMERICA LLC**  
Employer

**OC: 02/19/17**  
**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:**

Joel Bell filed an appeal from the March 9, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Bell was discharged on February 14, 2017 for excessive unexcused absences. After due notice was issued, a hearing was held on June 16, 2017. Mr. Bell participated. Joyce Stimpson represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence.

**ISSUE:**

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 March 9, 2017, Iowa Workforce Development mailed a copy of the March 9, 2017, reference 01, decision to Joel Bell at his last-known address of record. The decision disqualified Mr. Bell for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Bell was discharged on February 14, 2017 for excessive unexcused absences. The decision stated that an appeal from the decision must be postmarked by March 19, 2017 or received by the Appeals Bureau by that date. The back side of the decision contained clear and concise instructions for filing an appeal from the decision. Mr. Bell did not read the appeal deadline information on the decision. Mr. Bell did not read the appeal instructions on the reverse side of the decision. The United States Postal Service delivered the decision to Mr. Bell's neighbor's mailbox. Mr. Bell's neighbor provided the decision to Mr. Bell in mid-March 2017. In March, Mr. Bell went to the Fort Madison Workforce Development Center at a time when the agency representative had stepped out for lunch. Mr. Bell wanted assistance in filing an appeal. Mr. Bell elected not to return to the Workforce Development Center later in the day after the agency representative returned from lunch. Ms. Bell thereafter set the matter aside and did not take steps to file an appeal until June 1, 2017, despite additional contact with the Fort Madison Workforce Development Center before June 1. Mr. Bell elected during that time to focus instead of his search for new employment.

On June 1, 2017, Mr. Bell went to the Workforce Development Center in Fort Madison, completed an appeal form with the assistance of the agency representative and delivered the completed form to the agency representative. The Appeals Bureau received the appeal by fax on June 1, 2017.

**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. Bell's appeal was filed on June 1, 2017, when Mr. Bell delivered the completed appeal form to the agency representative in Fort Madison and the Appeals Bureau received the appeal by fax.

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).

Mr. Bell's appeal was untimely. It is hard to say whether Mr. Bell received the decision prior to the March 19, 2017 appeal deadline. For that reason, the administrative law judge concludes that Mr. Bell may not have had a reasonable opportunity to file an appeal by the March 19, 2017 appeal deadline. In any event, Mr. Bell received the decision in mid-March 2017 and elected not to take reasonable and effective steps to file an appeal until June 1, 2017. Iowa Administrative Code rule 871-24.35(2)(c) provides that no appeal shall be considered timely if the delay in filing is determined to be unreasonable under the circumstances in the case. Mr. Bell's decision to delay filing the appeal from his receipt of the decision in mid-March 2017 and June 1, 2017 involved substantial and unreasonable delay. The instructions for filing an appeal were readily available to Mr. Bell on the back side of the decision that he did not read. Mr. Bell elected not to take reasonable and timely steps to enlist the assistance of the Agency in filing his appeal. Instead, he put off taking those steps until more than two months after the appeal deadline had expired. Because the appeal was untimely, Mr. Bell failed to preserve his right to challenge the March 9, 2017, reference 01, decision and the administrative law judge does not have jurisdiction to disturb the decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The March 9, 2017, reference 01, decision remains in effect.

**DECISION:**

The March 9, 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 February 14, 2017 discharge, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs