

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA J ZUMMAK**  
Claimant

**APPEAL NO. 13A-UI-00339-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 11/11/12  
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Laura Zummak filed an appeal from the December 7, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 11, 2013. Ms. Zummak participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 11, 2012, Laura Zummak established a claim for unemployment insurance benefits. On December 6, 2012, Ms. Zummak participated in a fact-finding interview concerning her separation from the US Postal Service. On December 7, 2012, Workforce Development mailed a referenced 01 decision to Ms. Zummak at her last-known address of record. That decision allowed benefits to Ms. Zummak in connection with the separation from the US Postal Service *provided she met all other eligibility requirements*. Ms. Zummak received that decision in a timely manner.

On December 11, 2012, Ms. Zummak participated in a second fact-finding interview. This one concerned her separation from Target Corporation. On December 12, 2012, Workforce Development mailed a reference 02 decision to Ms. Zummak at her last-known address of record. Ms. Zummak received that decision on December 15, 2012. The decision told Ms. Zummak she was not eligible for benefits. The explanation contained in the decision indicated that the denial of benefits was based on Ms. Zummak's separation from Target. The decision made no reference to the US Postal Service. The decision warned that any appeal must be mailed or received by the Appeals Section no later than December 22, 2012. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. December 22, 2012 was a Saturday

and the next working day was December 24, 2012. Workforce Development offices were open that day. The back of the decision contained plainly worded instructions for appealing the decision.

Ms. Zummak did not carefully read the December 12, 2012, reference 02, decision when she received it. Ms. Zummak did not carefully read the section that provided the deadline for appeal. Though the decision provided a Workforce Development telephone number Ms. Zummak could contact if she had any questions about the decision, Ms. Zummak did not heed or make use of that information. Instead, Ms. Zummak erroneously assumed that since she got a decision in her favor in reference to her separation from the US Postal Service that she need not do anything in response to the subsequent decision that denied benefits.

On December 12, 2012, Ms. Zummak received a direct deposit payment for unemployment insurance benefits. On December 14, 2012, Ms. Zummak received another direct deposit payment for unemployment insurance benefits. On December 21, 2012, Ms. Zummak checked her bank account and noted there was no direct deposit for unemployment insurance benefits. Though Ms. Zummak had some inkling at the time that she should immediately look into the matter, she chose instead to head out of town for the Christmas holiday. On December 28, 2012, Ms. Zummak again checked her bank account and again there was no check for unemployment insurance benefits. Ms. Zummak then elected to wait until after her child returned to preschool on January 3, 2013 to look into the matter.

On January 4, Ms. Zummak went to her local Workforce Development Center. Ms. Zummak spoke by "live chat" with a Workforce Development representative in Des Moines, who advised Ms. Zummak that she should have filed an appeal from the December 12, 2012, reference 02, decision that denied benefits. The Workforce representative instructed Ms. Zummak to file an appeal. Though Ms. Zummak was at the Workforce Development Center at that time, she did not file an appeal at that time. Instead, Ms. Zummak took a few days to collect supporting material.

On January 8, 2013, Ms. Zummak delivered a completed appeal form, and her supporting material, to her local Workforce Development Center. The appeal form is dated January 8, 2013. The Workforce Development Center staff marked on the appeal form that it was received by them on January 8, 2013. The Workforce Development Center mailed the appeal to the Appeals Section in an envelope bearing a January 8, 2013 postage meter mark. The Appeals Section received the appeal on January 11, 2013.

#### **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 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 Ms. Zummak did have a reasonable opportunity to file a timely appeal. Ms. Zummak received the adverse decision on December 15, 2012. At that point, she had nine days to file an appeal by the extended December 24, 2012 deadline. Ms. Zummak had the instructions for appeal as of December 15. As of December 15, Ms. Zummak also had a telephone number she could call if she had any questions about the decision. Ms. Zummak's delay in taking action to appeal the December 12, 2012, reference 02 decision was entirely attributable to Ms. Zummak's failure to read and follow the instructions on the decision. Ms. Zummak waited until January 4, 11 days after the appeal deadline had passed, to take any steps in the direction of filing an appeal. Ms. Zummak then delayed further before actually filing

an appeal on January 8, 2013. The appeal was filed when it was delivered to the local Workforce Development Center staff.

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 appeal was not timely filed pursuant to Iowa Code section 96.6(2). Due to the untimeliness of the appeal, the administrative law judge lacks jurisdiction to enter a ruling that might 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 December 7, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that denied benefits remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css