

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TABOR L ALLEN

Claimant

APPEAL NO. 14A-UI-06046-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/05/14

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Tabor Allen filed an appeal from the April 24, 2014, reference 03, decision that denied benefits effective January 5, 2014 based on an agency conclusion that Mr. Allen had failed to report as directed and did not meet the availability eligibility requirements. After due notice was issued, a hearing was held on July 3, 2014. Mr. Allen participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-06047-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUE:

Whether Mr. Allen's appeal the April 24, 2014, reference 03, decision 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 April 24, 2014, Iowa Workforce Development mailed a copy of the April 24, 2014, reference 03, decision to Tabor Allen's last-known address of record. The decision denied benefits effective January 5, 2014 based on an agency conclusion that Mr. Allen had failed to report as directed and did not meet the availability eligibility requirements. Mr. Allen received the April 24, 2014, reference 03, decision in a timely manner, on April 24 or 25, 2014. Mr. Allen read the portion of the decision that indicated he was not eligible for benefits, but did not read the decision in its entirety. The decision contained a warning that an appeal from the decision must be postmarked by May 4, 2014 or received by the Appeals Section by that date. Mr. Allen did not read the portion of the decision that contained the appeal deadline information. Mr. Allen took no further action on the matter until he received the June 2, 2014, reference 04, decision that indicated he was overpaid benefits. Mr. Allen received the overpayment decision on June 4, 2014. Mr. Allen drafted an appeal letter. On June 10, 2014, Mr. Allen mailed the appeal letter to Workforce Development. The envelopment in which the appeal was mailed bears a June 10, 2014, 2:00 p.m. postmark. The Appeals Section received the appeal on June 12, 2014.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Allen's appeal was filed on June 10, 2014, the postmark date on the envelope in which the appeal was submitted.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed, Mr. Allen filed his appeal more than a month after the appeal was due. 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 from the April 24, 2014, reference 03, decision. Mr. Allen received the decision on April 24 or 25, 2014, well before the appeal deadline.

The administrative law judge concludes that Mr. Allen's failure to file a timely appeal of April 24, 2014, reference 03, decision 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). Instead, all of the delay was attributable to Mr. Allen's decision not to read the decision in its entirety and his decision at the time not to file an appeal. Because Mr. Allen's appeal of April 24, 2014, reference 03, decision was not timely filed pursuant to Iowa Code section 96.6(2), Mr. Allen has failed to preserve his right to challenge that decision and the administrative law judge lacks jurisdiction to disturb that decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claims deputy's April 24, 2014, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision that denied benefits effective January 5, 2014 remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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