

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 20 D.o.E. App. Dec. 241)**

In re Damon Knowling :
Julie McCabe Knowling, Appellant :
v. : **DISMISSAL FOR
LACK OF JURISDICTION**
Iowa High School Athletic Association, :
Appellee. : **[Adm. Doc. # 4524]**

A letter dismissing the appeal submitted in the above-captioned matter was filed on September 19, 2002, citing two reasons for the dismissal, that the appeal was submitted beyond the ten-day deadline and that the appeal was not in the form of an affidavit. On October 4, 2002, this agency received a letter dated September 24, 2002 from Julie McCabe Knowling, which shall be treated as a motion for rehearing pursuant to Iowa Code section 17A.16 and 281 Iowa Administrative Code 6.20.

FINDINGS OF FACT

The Board of Control of the Iowa High School Athletic Association [“IHSAA”] convened its regular meeting on September 4, 2002. At that meeting, the Board denied relief to Damon Knowling, son of Julie McCabe Knowling, from the General Transfer Rule, 281 Iowa Administrative Code 36.15(3). This meant that Damon is ineligible to complete in interscholastic athletic competitions and contests for 90 school days from the time he started classes this semester at Iowa City Regina High School, a member school of the IHSAA.

According to her appeal letter submitted to the Iowa Department of Education on September 17, 2002, Ms. McCabe Knowling knew of the decision on September 4, 2002 because, at the suggestion of the activities director of Regina High School, she called the IHSAA on that date, a Friday, to see if Damon could play football that night. She spoke to Assistant Executive Director Richard Wulkow of the IHSAA, who, according to Ms. McCabe Knowling’s letter, told her that Damon was not eligible to do so.

The written notice of denial also was mailed by the IHSAA on September 4, 2002. Because of various reasons cited in her letter that are not disputed by this agency, Ms. McCabe Knowling did not receive the IHSAA written notice of denial until September 15, 2002. Attached to that written decision was a copy of the rule at 281 IAC 36.17, which specifies how an appeal from a decision of the Board of Control may be perfected to the director of this agency. This rule, provided by the IHSAA as a courtesy to parents, was inaccurate in that it did not contain the new rule language (effective June 19, 2002) that requires that appeals be in the form of an affidavit. The balance of the rule was unchanged.

The appeal sent in by Ms. McCabe Knowling, which was not notarized, was postmarked September 17, 2002. This is beyond the ten-day appeal deadline of September 14, 2002.

CONCLUSIONS OF LAW

281 Iowa Administrative Code 36.17 states, in pertinent part, as follows:

Appeals to Director. If the claimant is still dissatisfied, an appeal may be made in writing to the Director of Education by giving written notice of the appeal to the State Director of Education with a copy by registered mail to the executive officer of the governing organization. An appeal shall be in the form of an affidavit and shall be filed within ten days after the date of mailing of the decision of the governing organization. ...

In this agency's letter of September 19, 2002, the lack of an affidavit was pointed out to Ms. McCabe Knowling. However, the letter states that the "primary reason the Director of the Department of Education does not have authority to grant you an appeal is the untimeliness of your appeal." In fact, this agency's practice has been to give appellants a second chance to mail or fax in an affidavit of appeal if the original appeal document was filed in a timely manner. The point about an affidavit in the letter of September 19, 2002 was made so that Ms. McCabe Knowling would be aware of that requirement in the future. [As an aside, this agency notes that it has brought to the IHSAA's attention that it was using an old rule; this has been corrected by the IHSAA.]

The lack of an affidavit was not why this appeal was dismissed. The appeal was dismissed because the postmark thereof was September 17, 2002, and this date is beyond the ten-day deadline established in rule 36.17. Appeal deadlines are mandatory and jurisdictional. *See, Bellach v. IMT Insurance Company*, 573 N.W.2d 903, 904-905 (Iowa 1998); *Foley v. Iowa Department of Transportation, Motor Vehicle Div.*, 362 N.W.2d 208, 210 (Iowa 1985). Filing an appeal in a timely manner is a jurisdictional requirement that cannot be waived by this agency. As this agency is without jurisdiction to entertain this appeal, it must be dismissed.

DECISION

For the foregoing reasons, it is ordered that the notice of appeal filed herein by Julie McCabe Knowling be dismissed for lack of jurisdiction. For purposes of further recourse, Ms. McCabe Knowling's attention is directed to Iowa Code section 17A.19.

Date

Carol J. Greta, J.D.
Administrative Law Judge

So ordered.

Date

Ted Stilwill, Director
Iowa State Department of Education