

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SETH W STEENSEN**  
Claimant

**APPEAL NO. 08A-UI-10019-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/15/08 R: 01  
Claimant: Appellant (1R)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 13, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 13, 2008. Claimant participated and waived notice on the issue of Iowa Code § 96.6(2) regarding timeliness of the appeal. Department's Exhibit D-1 was received.

**ISSUE:**

The issue is whether claimant's appeal was timely and if claimant is able to and available for work effective October 5, 2008.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was living in Houston, Texas, between the end of July 2007 and October 25, 2008, but did not have his mail forwarded to Texas and had his girlfriend collect his mail but did not open it or send it to him. He anticipated being there a month but was there longer. He did not contact the unemployment office in Texas but filed his weekly phone claims, although he did not look for work in Texas because he was volunteering for hurricane clean up. The work search issue has not been addressed at the claims level and is remanded for an investigation and determination. A notice to report and register for work by October 3 and another to report by October 16 were mailed to claimant at his address of record in Council Bluffs. When he did not report, an ineligibility decision was mailed to him at his address of record on October 13, 2008. He discovered the ineligibility decision when he was not allowed to file his weekly claim for the week ending October 11, 2008. He then made some phone calls and found out about the decision but did not file his appeal until October 28, 2008, after he returned to Iowa on October 25, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 23, 2008. The appeal was not filed until October 28, 2008, which is after the date noticed on the disqualification decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is untimely.

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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed, even though the claimant was aware of the ineligibility decision during the week the decision was mailed because he called for information after not being able to file his weekly telephone claim. In spite of that information, he waited an additional five days to file his appeal. 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 Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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).

**DECISION:**

The October 13, 2008, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Claimant is ineligible for benefits from October 5, 2008 through October 25, 2008, based upon his failure to report as directed on October 3 and October 16, 2008.

**REMAND:**

The work search issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw