

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TENAIRE L SHORTY**  
Claimant

**APPEAL 19A-UI-05839-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/30/18**  
**Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) - Able and Available  
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report  
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

**STATEMENT OF THE CASE:**

On July 16, 2019, the claimant filed an appeal from the July 5, 2019, (reference 04), unemployment insurance decision that denied benefits based upon a failure to report as directed. After due notice was issued, a telephone conference hearing was scheduled to be held on August 13, 2019. Claimant participated. Department's Exhibit D-1 was received. Claimant's Exhibit A was received.

**ISSUES:**

Is the appeal timely?  
Did the claimant fail to report to the department as directed?  
Is claimant able to and available for work effective June 23, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 5, 2019, Iowa Workforce Development mailed the reference 01 unemployment insurance decision denying benefits to claimant's last address of record. The decision was delivered shortly thereafter, but claimant did not check the mail until July 15, 2019. The decision states that the deadline to file an appeal is July 15, 2019. Claimant sent an email to the Appeals Bureau the next day, on July 16, 2019.

The decision denying claimant benefits is based on her failure to provide the correct name and address of her last employer to the department as directed. Claimant provided this information in her appeal on July 16, 2019, which has been marked and entered into the record as Exhibit A.

Claimant's last employer is ProEnergy, 2001 ProEnergy Boulevard, Sedalia, Missouri 65301.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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 unemployment insurance 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

However, whether the claimant is able to and available for work is a week-by-week determination. Since the claimant did provide information regarding her last employer to the Appeals Bureau on July 16, 2019, this matter will be remanded to the Benefits Bureau of Iowa Workforce Development for a decision on whether claimant has reported as requested and is considered eligible for benefits effective July 16, 2019, going forward.

**DECISION:**

The July 5, 2019, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:**

The issue of whether claimant reported as directed by providing information regarding her last employer (Claimant's Exhibit A and noted in the findings of fact above) to the Appeals Bureau on July 16, 2019, and is eligible from that point going forward is remanded to the Benefits Bureau of Iowa Workforce Development for a decision.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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