

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH D GOMEZ
Claimant

APPEAL 19A-UI-07831-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 02/10/19
Claimant: Appellant (1)**

Iowa Code § 96.3(5)b – Training Extension Benefits
Iowa Admin. Code r. 871-24.40 Training Extension Benefits
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 7, 2019, the claimant filed an appeal of the September 19, 2019, (reference 05) unemployment insurance decision that denied claimant's application for training extension benefits. Claimant requested an in-person hearing. An order was issued first scheduling a telephone hearing on the issue of whether the appeal is timely. After due notice was issued, a telephone conference hearing was scheduled to be held on October 29, 2019. Claimant participated. Department's Exhibit D-1 was received.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 19, 2019, Iowa Workforce Development mailed a reference 05 decision to claimant's last known address that denied her request for training extension benefits. There is no reason to believe claimant did not receive the decision within two or three days of it being mailed. The decision warned that an appeal was due by September 29, 2019.

Claimant did not open the letter immediately after receiving it. Claimant was suffering from depression and anxiety and was not opening the mail. Claimant was not hospitalized for her condition. Claimant remained at home and asked her doctor to change her medication.

On October 6, 2019, claimant opened her mail and read the decision.

On October 7, 2019, claimant filed an appeal.

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. Although claimant was feeling ill due to her medical condition, she did not establish she was so incapacitated she was physically or mentally unable to open her mail and file an online 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 because of this, the administrative law judge does not have authority to decide whether claimant was properly denied training extension benefits. 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). Therefore, no in-person hearing on that issue will be scheduled.

DECISION:

The September 19, 2019, (reference 05) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision denying training extension benefits remains in effect. No in-person hearing on the issue of whether claimant is eligible for training extension will be scheduled.

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Decision Dated and Mailed

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