

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELIJAH C BAHATI**  
Claimant

**APPEAL 20A-UCFE-00003-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 11/24/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant, Elijah C. Bahati, filed an appeal from the December 18, 2019 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on February 13, 2020. The hearing was held jointly with Appeal 20A-UCFE-00004-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Department Exhibits D-1 (Appeal from Reference 02 decision) and D-2 (Appeal from Reference 04 decision) were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

An initial unemployment insurance decision (Reference 02) resulting in a disqualification of benefits based upon separation was mailed to the claimant's last known address of record on December 18, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 28, 2019. December 28, 2019 was a Saturday, so the final day to appeal was extended to December 30, 2019. The claimant was out of town with friends during the prescribed period to appeal and did not check his mail. He stated he did not receive the initial decision, although it is possible his mother did open it on his behalf.

Thereafter, an initial decision dated January 7, 2020 (reference 04) establishing an overpayment was mailed to the claimant's address of record. He again was out of town during the appeal period but did receive the initial decision. It was also his first notice of the reference 02 decision existing. He does not recall what day he received it, but that his mother opened it and set it on the table for him.

He did not read the overpayment decision thoroughly to see that an appeal to the decision was due January 17, 2020. He did not call customer service with questions but waited “two to three weeks” before going to his local office in Cedar Rapids to file the appeal. He wrote his appeal at the local office on January 28, 2020 (Department Exhibit D-1), and it was forwarded to the Appeals Bureau on January 30, 2020 by the IWD representative.

### **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:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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 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. 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 claimant chose to not check his mail for an extended period while he left town to be with friends, and did not make arrangements to timely check his mail. Upon receiving the initial decision, he waited approximately two to three weeks before filing the appeal because he did not read the appeal instructions contained on the decision. Two to three weeks is beyond the allotted ten-day period to appeal, regardless of what day the claimant returned home and discovered his mail containing the decision. Even if this was his first notice of the disqualifying decision at hand, he still waited over ten days after learning it existed to inquire or file an appeal. The claimant's appeal was filed on January 28, 2020, approximately five and a half weeks after it was sent.

Based on the evidence presented, the administrative law judge concludes that the claimant's 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 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).

**DECISION:**

The December 18, 2019, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Jennifer L. Beckman  
Administrative Law Judge  
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Decision Dated and Mailed

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