

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MACY A VOLLMER**  
Claimant

**APPEAL NO. 19A-UI-04202-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRAIG PROBASCO**  
Employer

**OC: 04/14/19**  
**Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Appeals

**STATEMENT OF THE CASE:**

Craig Probasco, the employer, filed an appeal from a representative's unemployment insurance decision dated May 9, 2019, reference 01, which held claimant eligible to receive unemployment insurance benefits, finding that the employer's protest of the claimant's separation from work on August 25, 2018 could not be accepted because it was not timely. After due notice was issued, a telephone conference hearing was held on June 18, 2019. Although duly notified, the claimant did not participate. The employer participated by Mr. Probasco.

**ISSUE:**

At issue in this matter is whether the appeal filed herein was timely.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the employer's last known address of record on May 9, 2019 and received by the employer at its address of record within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 19, 2019. The appeal was not postmarked until May 20, 2019, which is after the date noticed on the disqualification decision.

Mr. Probasco, the company owner had been out of town for four days before returning and leaving again for an additional three days during the time for him to question. Mr. Probasco did not note the disqualification decision until his return when he filed an appeal from the adjudicator's decision that allowed benefits to Ms. Vollmer. The employer made no arrangements to have official mail handled by any other employee during his absence and had not had official correspondence forwarded to him.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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. 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 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 section 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 representative's unemployment insurance decision dated May 9, 2019, reference 01, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn