

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAREY KINER
Claimant

APPEAL NO: 18A-UI-02866-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAAZ LLC
Employer

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed the February 19, 2018, (reference 02) decision which denied benefits based upon separation with this employer. A telephone hearing was held on April 17, 2018. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. The employer was represented by Mark Pearson. Ghuel Novack also participated. The hearing was held jointly with Appeal 18A-UI-02867-JC-T. Department Exhibit D-1 and Claimant Exhibits A and B were admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial decision resulting in disqualification was mailed to the claimant's last known address of record on February 19, 2018. She received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 1, 2018. The appeal was not filed until March 2, 2018, which is after the date noticed on the unemployment insurance decision (Department Exhibit D-1).

The claimant stated she had never filed an appeal and was unsure how to do it. She believed she would need to visit a local office to file her appeal, and did not read the back page of the initial decision which contains instructions on the Appeal process. The claimant could have filed her appeal by US postal service, online, fax or visited a local office. The same information regarding appeals is contained in the claimant handbook, which the claimant agreed to read at the time she established her unemployment insurance claim. Even though the claimant was unsure how to file her appeal, she delayed even contacting IWD (via the Spencer office) until March 1, 2018, the final day to appeal. The claimant stated her contact with IWD and subsequent visit to the Spencer office was delayed due to her busy work schedule.

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:

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, subsections 10 and 11, 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).

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 received the initial decision within the prescribed period, which required her to file an appeal by March 1, 2018. She did not file her appeal until March 2, 2018. The claimant delayed filing her appeal because she did not read the instructions contained on the initial decision which directed her to multiple options to appeal the initial decision. The claimant erroneously believed she had to visit a local office to file and was delayed due to her work schedule.

The administrative law judge is sympathetic to the claimant but concludes her 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 February 19, 2018, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn