

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**FELICIA A NORWOOD**  
Claimant

**HOME CHOICES LLC**  
Employer

**APPEAL 20A-UI-16075-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Respondent (1R)**

Iowa Code § 96.5(3)a – Failure to Accept Work  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer/appellant, Home Choices LLC., filed an appeal from the August 31, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2021. The claimant, Felicia A. Norwood, participated personally. Roberto Bruno testified. The employer participated through Julie Kitt.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 and D-2 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:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a caregiver and was separated from employment on June 30, 2020. No subsequent offers of work were made to the claimant.

The claimant established her claim with an effective date of June 7, 2020. The administrative records reflect that when the employer responded to the initial notice of claim, it stated the claimant had refused an offer of work on June 12, 2020. However, the claimant had not yet separated when the claimant allegedly refused to perform work. Claimant also did not refuse to work; she mixed up her schedule. The claimant’s permanent separation on June 30, 2020 has not yet been determined at the claims level.

An initial unemployment insurance decision (Reference 02) resulting in an allowance of benefits was mailed to the employer's last known address of record on August 31, 2020. The decision

contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 10, 2020. She received the decision within the appeal period. The appeal was filed on November 16, 2020. (See Department Exhibit D-1). Employer filed its appeal upon receiving a statement of charges.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the 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 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).

The following issues are remanded to the Benefits Bureau for an initial investigation and decision:

1. Whether claimant was totally, temporarily or partially unemployed from June 7, 2020 until her separation on June 30, 2020?
2. Whether claimant's permanent separation effective June 30, 2020 disqualifies her from the receipt of unemployment insurance benefits?

**DECISION:**

The August 31, 2020, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:** The following issues are remanded to the Benefits Bureau for an initial investigation and decision:

1. Whether claimant was totally, temporarily or partially unemployed from June 7, 2020 until her separation on June 30, 2020?
2. Whether claimant's permanent separation effective June 30, 2020 disqualifies her from the receipt of unemployment insurance benefits?



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February 16, 2021  
Decision Dated and Mailed

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