

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RAKIM TULLIS**  
Claimant

**MARKETLINK INC**  
Employer

**APPEAL 20A-UI-09020-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

On July 28, 2020, the claimant filed an appeal from the June 25, 2020, (reference 03) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2020. Claimant participated. Employer did not register for the hearing and did not participate. Department Exhibit 1 was admitted into the record.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 28 and 29, 2020, Iowa Workforce Development mailed claimant reference 01 and 02 unemployment insurance decisions allowing benefits based on separations from other employers.

On June 25, 2020, Iowa Workforce Development mailed a reference 03 unemployment insurance decision to claimant's last address of record denying benefits based on his availability for work with this employer. The decision warned that an appeal was due by July 5, 2020. Claimant received the decision within the appeal period.

Claimant did not keep close track of the appeal deadline or contact Iowa Workforce Development to see if he needed to appeal the denial decision. Finally, at the end of July 2020, claimant had a conversation about the issue with his father and his father advised him to file an appeal. Claimant filed the appeal on July 28, 2020.

**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. 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).

**DECISION:**

The June 25, 2020, (reference 03) 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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Christine A. Louis  
Administrative Law Judge  
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September 18, 2020  
Decision Dated and Mailed

cal/sam