

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GINA LARK**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-08559-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/17/21  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available/  
Iowa Admin. Code r. 871-24.2(1)(e) – Able & Available – Report as Directed by Department  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant, Gina Lark, filed an appeal from the December 29, 2021, (reference 04), unemployment insurance decision that denied benefits after claimant failed to report as directed. After proper notice, a telephone hearing was held on May 17, 2022. The claimant participated personally. Official notice of the administrative record was taken. Department Exhibit 1 was 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.

**ISSUES:**

Is the appeal timely?  
Did claimant fail to report as directed?  
Was the claimant able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: Claimant established a claim for benefits effective October 17, 2021.

An initial decision (reference 04) was mailed to the claimant /appellant's address of record on December 29, 2021. The decision contained a warning that an appeal must be filed by January 9, 2022. The decision also directed the appellant to call the customer service line for assistance. Appellant saw the denial letter but did not read it through as it upset her. Appellant was later informed by a friend she should try to appeal the decision, and so appellant filed the appeal on April 5, 2022 (See Department Exhibit 1). The appeal was filed online (See Department Exhibit 1). No evidence was presented that the delay was due to agency or postal service error.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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).

In this case, claimant filed her appeal to the December 29, 2021 decision on April 5, 2022, several months past the due date to appeal. The administrative law judge is sympathetic to the claimant's situation. However, 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 December 29, 2021, (reference 04), unemployment insurance decision that denied benefits after claimant failed to report as directed is affirmed. The claimant failed to file a timely appeal and the appeal is dismissed.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

May 23, 2022  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:**

You may find additional information about food, housing, and other resources by dialing 211 or at:

<https://covidrecoveryiowa.org/>  
<https://dhs.iowa.gov/node/3250>,  
<https://www.211iowa.org/>

To contact the Substance Abuse and Mental Health Services Administration (SAMHSA):

<https://www.samhsa.gov/> or  
Phone: 1-800-273-8255