

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TROY A CRETSINGER**  
Claimant

**APPEAL 18A-UI-06752-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/04/18  
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits

**STATEMENT OF THE CASE:**

Troy A. Cretsinger (claimant) filed an appeal from the June 4, 2018, reference 03, unemployment insurance decision that denied his request for retroactive benefits. After due notice was issued, a telephone conference hearing was held on July 9, 2018. The claimant participated. The Department's Exhibits D1 and D2 were admitted into the record.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on June 4, 2018. He received the decision within ten days on or about June 8, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 14, 2018. The claimant did not read the decision thoroughly and did not realize there was a time limit for filing an appeal. The claimant contacted Iowa Workforce Development (IWD) on or about June 15, 2018 to discuss the decision and was told at that time to file an appeal. The appeal was not filed until June 21, 2018.

**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:

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, in relevant part:

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.

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 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 claimant had reasonable opportunity to file a timely appeal as his decision not to read the unemployment insurance decision in its entirety does not render the notice of the disqualification and appeal rights invalid. The claimant's failure to file a timely appeal 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). As the appeal was not timely filed, 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 4, 2018, 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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