

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN E RAINBOLT
Claimant

APPEAL 19A-UI-04918-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/24/19
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report

STATEMENT OF THE CASE:

John Rainbolt (claimant) appealed a representative's May 31, 2019, decision (reference 01) that concluded he was ineligible for benefits because he failed to report for a reemployment services appointment. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on July 16, 2019. The claimant participated personally. Becky Goodier participated on behalf of Iowa Workforce Development. Department's Exhibit D-1 and D-2 were admitted into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective March 24, 2019. He was selected to participate in a reemployment services appointment on April 30, 2019, and Essential Tools for Job Seekers and NCRC on May 29, 2019. The claimant signed Re-Employment Services and Eligibility Assessment Agreement on April 30, 2019 (Exhibit D-1). The document indicated that if he did not appear at the scheduled time it would "result in the denial of unemployment insurance benefits. The document indicated that the claimant would be allowed to reschedule the activities if he requested to do so prior to the date of the activity. The claimant did not attend the activities on May 29, 2019, because he thought they were scheduled for May 28, 2019, and he was busy on that day.

An initial unemployment insurance decision (Reference 01) resulting in the claimant being ineligible for benefits as of May 26, 2019, was mailed to the claimant's last known address of record on May 31, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 10, 2019. He received the decision within the

appeal period. The initial decision stated: "If you have questions please call customer service at 866-239-0843".

On June 10, 2019, the claimant contacted Ms. Goodier for information. During the discussion, Ms. Goodier mentioned filing an appeal to the representative's decision but the claimant did not do so. On June 18, 2019, the claimant spoke with a worker in customer service. The appeal was not filed until June 18, 2019, which is after the date noticed on the decision (Exhibit D-2). The claimant did not file an appeal sooner because he assumed his denial decision could only be remedied by rescheduling the RESEA appointment.

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.

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 claimant assumed in error that his denial of benefits due to failure to attend a reemployment services appointment could not be remedied by an appeal. When the claimant received the decision, he contacted the department for assistance, as directed by the decision. 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 untimely 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 representative's May 31, 2019, decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs