

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

PATRICIA ARVANIS
Claimant

APPEAL NO: 21A-UI-18459-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2020, reference 02, decision that denied benefits because she had an existing balance in another state. After due notice was issued, a hearing was held by telephone conference call on November 8, 2021. The hearing was held jointly with appeal 21A-UI-18460-SN-T, 21A-UI-18459-SN-T, and 21A-UI-18461-SN-T. The claimant did participate. Department's Exhibit D-1 was received.

ISSUES:

Whether the claimant's appeal is timely? Were there reasonable grounds to consider the appeal otherwise timely?

Whether the claimant had an existing balance in another state?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record on August 10, 2020. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 20, 2020. (Exhibit D-1) The decision also displayed the following warning, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The appeal was not filed until August 20, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The claimant acknowledged she received the decision on time. However, she said she did not appeal because she no longer needed unemployment because she was starting a new job.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely. He further concludes he does not have jurisdiction to evaluate the merits.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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).

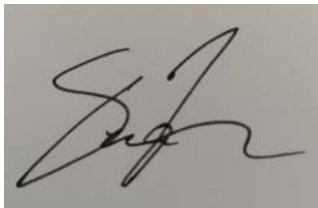
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 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 did have a reasonable opportunity to appeal. While the claimant was laboring under a misconception about whether the decision would only apply to future payments, the decision itself explicitly stated that it could establish an overpayment. She had all the information she needed to make an appeal when she received it. It is unfortunate that she chose not to appeal and the administrative law judge is sympathetic to the impact of the decision, but such sympathy is not enough to toll the appeal period.

The administrative law judge concludes that failure 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 10, 2020, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 21, 2021
Decision Dated and Mailed

smn/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.