CHRISTOPHER D STANTON Claimant **IOWA WORKFORCE DEVELOPMENT** **DEPARTMENT**	**APPEAL 17A-UI-08972-CL-T** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 08/06/17** **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)*h*(1), (2) – Backdating

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 16, 2017, (reference 01) unemployment insurance decision that denied the request to backdate the claim for benefits prior to August 6, 2017. After due notice was issued, a hearing was scheduled to be held by telephone conference call on September 21, 2017. Claimant participated.

ISSUES:

Is the appeal timely?
May the claim be backdated prior to August 6, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on August 16, 2017. Claimant received the decision within the appeal period. The decision contained a warning that an appeal must be filed by August 26, 2017. Claimant did not fully review the decision and did not realize there was a deadline by which to file an appeal. Claimant gave the decision to his supervisor, who told him that he would take care of it. Every day claimant checked in with his supervisor about the decision. On August 31, 2017, the supervisor filed an appeal on claimant's behalf.

The claimant filed a claim for benefits with an effective date of August 6, 2017, and desires to backdate the claim to July 30, 2017. Claimant was temporarily laid off during the two weeks ending August 5, 2017. Claimant believed he had enough vacation time to cover the layoff period. Claimant did not learn he did not have any vacation time to cover the second week of the layoff until he returned to work on August 7, 2017. Claimant then filed the claim and requested it be backdated on August 15, 2017.

The department has not failed to recognize the expiration of the claimant's previous benefit year and there is not an interstate claim against another state which has been determined as ineligible.

The June 2017 *Unemployment Insurance Benefits Handbook*, provides in pertinent part at page 8:

> **File a Claim**
> Hours: Monday through Friday, 8:00 am to 4:30 pm
> www.iowaworkforcedevelopment.gov
> https://uiclaims.iwd.iowa.gov/UIInitialClaim/
>
> **Weekly Claim Reporting**
> Hours: Saturday 9:00 am through Sunday 11:30 pm
> www.iowaworkforcedevelopment.gov

The handbook provides in pertinent part at pages 13 and 14:

> **CLAIM EFFECTIVE DATE**
> The effective date of all UI claims, regardless of filing method, will be the Sunday of the week in which the application was filed.

and

> **REACTIVATING A CLAIM**
> An individual can start and stop claiming weekly benefits as many times as necessary during the benefit year. This is called a break in reporting status. Any break in reporting requires the individual to file another initial claim application during the week he/she wants to start collecting benefits again. Any employment during the break must be reported.

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).

Even if the appeal were timely, the administrative law judge concludes the claimant's request to backdate the claim must be denied.

Iowa Code section 96.6(1) provides:

> 1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)*h*(1) and (2) provide:

> Procedures for workers desiring to file a claim for benefits for unemployment insurance.
>
> (1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:
>
> *h.* Effective starting date for the benefit year.
>
> (1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.
>
> (2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:
>
> 1. The failure of the department to recognize the expiration of the claimant's previous benefit year;

2. The claimant filed an interstate claim against another state which has been determined as ineligible.

Effective July 12, 2017, Iowa Admin. Code r. 871-24.2(1)*h*(1) and (2) allows backdating for only the two reasons cited above. Neither of those reasons applies in this case. Accordingly, the backdating request would be denied even if the appeal were timely.

DECISION:

The August 16, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal is untimely, and the decision of the representative remains in effect.

_____
Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

_____
Decision Dated and Mailed

cal/scn