

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN K BRINEY
Claimant

APPEAL NO. 10A-UI-02207-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 11/23/08
Claimant: Appellant (1)**

Public Law 110–252, Title IV – Eligibility for Emergency Unemployment Compensation
Public Law 110–449 – Additional Emergency Unemployment Compensation
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Karen K. Briney (claimant) appealed a representative's January 5, 2010 decision (reference 01) that concluded she was not eligible for emergency unemployment compensation (EUC) benefits as of November 22, 2009 because she had regular benefit eligibility which she had not yet exhausted. This appeal was consolidated for hearing with one related appeal, 10A-UI-02208-DT. Hearing notices were mailed to the claimant's last-known address of record for a telephone hearing to be held on April 15, 2010. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, a review of the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely?

Was the claimant eligible for EUC benefits?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on January 5, 2010. No evidence was provided to rebut the presumption that the decision was received within a short time after it was mailed. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 15, 2010, a Friday. The appeal was not filed until it was postmarked on January 29, 2010, which is after the date noticed on the disqualification decision. The appeal was apparently submitted at that time in response to the resulting overpayment decision that had been issued on January 20, 2010 (reference 02), the subject of 10A-UI-02208-DT.

The claimant established an initial unemployment insurance benefit year effective November 23, 2008. She received regular unemployment insurance benefits until her maximum regular benefit eligibility (\$5,184.72) was reached as of the week ending October 3, 2008. Her claim

was then reopened as an additional claim for emergency unemployment compensation (EUC) benefits effective October 4, 2008 and she began receiving benefits under that program.

The claimant's initial benefit year expired one year after it was opened, on November 21, 2009. Because the claimant did not receive a letter advising her that she should establish a new claim year, no action was taken to establish the second regular benefit year until the week of December 20, 2009. The reason the claimant was monetarily eligible to open a new regular unemployment insurance claim and not eligible for further EUC benefits after the expiration of her prior claim year was that she had adequate wages in her new base period of July 1, 2008 through June 30, 2009 to maintain a regular UI claim for a claim year effective November 22, 2009, although her new weekly benefit amount based on those wages was \$137.00, as compared to \$224.00 from her 2008 claim year.

The claimant's regular benefit year was created and backdated to be effective November 22, 2009, and regular benefits have been issued for weeks beginning at that time. The claimant's regular benefit eligibility under the November 22, 2009 claim year has not been exhausted.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge would lack jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

However, even if the appeal is treated as timely, the result is the same. The federal program specifies that EUC benefits are only available for workers who have exhausted their rights to regular unemployment compensation benefits. Public Law 110-252, Title VI, effective June 30, 2008. In this case, the claimant was not eligible to receive further EUC benefits under her 2008 claim year as of November 22, 2009, because at that time she was monetarily eligible for a regular claim for benefits; that eligibility has not yet been exhausted.

DECISION:

The representative's January 5, 2010 decision (reference 01) is affirmed. The claimant was not eligible for further EUC benefits as of November 22, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw