

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SANDRA ROBERTS**

Claimant

**APPEAL 22A-UI-00462-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOP CL INC**

Employer

**OC: 03/15/20**

**Claimant: Appellant (1)**

Iowa Code section 96.1A(37) – Total and Partial Unemployment

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student

Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was receiving the same hours and wages as in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2022. The claimant participated and testified. The employer participated through Manager Alex Skidmore. Official notice was taken of the administrative record. Exhibits D-1 and D-2 were received into the record.

**ISSUES:**

Whether the claimant's appeal is untimely? Whether the claimant's appeal has reasonable grounds to be considered otherwise timely?

Whether the claimant was able and available effective November 29, 2020?

Whether the claimant was partially unemployed effective November 29, 2020?

Whether the employer is subject to charge?

**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 claimant's last known address of record on February 16, 2021. 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 February 26, 2021. (Exhibit D-1) The appeal was not filed until November 26, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The claimant did not appeal within the appeal period because she thought it would clear itself up.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

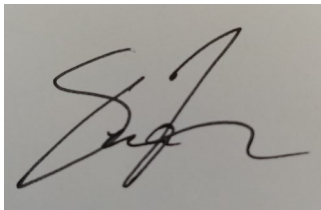
*Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Despite the warning on the decision warning the claimant not to wait, she opted to wait to see if it would just be figured out without an appeal. This delay is not something that the administrative law judge can toll because it is attributable to the claimant's decision-making rather than an error made by the US Postal Service or Iowa Workforce Development.

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 February 16, 2021, (reference 01), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Sean M. Nelson  
Administrative Law Judge  
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February 24, 2022  
Decision Dated and Mailed

smn/scn