

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROBERT MUGABE**  
Claimant

**APPEAL 17A-UI-03667-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 10/16/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
871 IAC 24.2(4)d(1) – Cancellation of Unemployment Insurance Claim

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 10, 2017, (reference 03), unemployment insurance decision that denied claimant's request to cancel his October 16, 2016, claim for benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on May 9, 2017. Claimant participated personally and through interpreter SKJS with CTS Language Link.

**ISSUES:**

Is the appeal timely?  
Did claimant make a timely request to cancel the claim?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A unemployment insurance decision denying claimant's request to cancel his October 16, 2016, claim was mailed to his last known address of record on January 10, 2017. Claimant received the decision in February 2017. Claimant had a friend translate the letter for him immediately thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 20, 2017. Claimant understood his request had been denied. Claimant did not go to his local office until March 31, 2017, to ask for help. At that time, claimant was advised his request to cancel his claim was untimely and he needed to appeal the decision. Claimant filed an appeal the same day.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 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 record in this case shows that at least one month passed between the date claimant received the decision and the date the 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).

#### **DECISION:**

The January 10, 2017, (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Decision Dated and Mailed

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