

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROBERT BEAN**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 21A-UI-20909-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/30/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Robert Bean filed an appeal from the August 20, 2020, (reference 03) unemployment insurance decision that found him to be too ill to work between March 29, 2020 and April 11, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on November 16, 2021. The claimant participated. The employer did not participate. Exhibit D-1 and D-2 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

Whether the claimant's appeal is timely?

Whether there are reasonable ground to consider it otherwise timely?

Was the claimant able to work and available for work between March 29, 2020, and April 11, 2020.

**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 20, 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 30, 2020. (Exhibit D-1) The appeal was not filed until September 19, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

On his appeal, the claimant excused his delay in filing to disabilities that he has been diagnosed with. He also excused his filing late to receiving a new job in which required him to work 60 hours per week with approximately 20 hours of traveling time. He did not state he received any of the decisions later than anticipated.

## 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's allegations that received all three of the decisions and that he was told by a representative that there was not a time limit for appeals not credible.

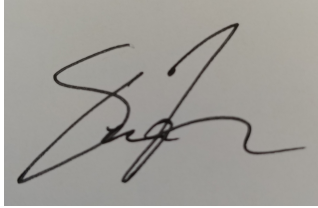
The administrative law judge finds these allegations not credible primarily because they were not listed as reasons for filing late on his appeal. He also generally finds these allegations to be so incredible as to almost be absurd. The first decision regarding eligibility had a date in 2020. It is simply absurd to believe that this was received on the same date as the other decisions. The same is true regarding the claimant's allegation that a representative of the agency told him there was not a timeline for appeals. While it is true that Iowa Workforce Development has had inexperienced staff working as advisors, it is unclear how someone untrained in the process would pronounce something so contrary to established processes. Rather the claimant believes the explanation given on the claimant's appeal for the delay in his filing regarding his disabilities and his working a full-time job.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant received the decisions at issue here. He declined to appeal within the statutory period because he was busy with his work. This reason is wholly attributable to the claimant's circumstances and does not undermine the fact that all three decisions stated the consequence for not appealing by a certain time.

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 20, 2020, (reference 03), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

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Sean M. Nelson  
Administrative Law Judge  
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December 30, 2021  
Decision Dated and Mailed

smn/kmj