

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBYN REYNOLDS

Claimant

APPEAL NO: 16A-UI-12272-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRANSAMERICA LIFE INSURANCE

Employer

OC: 10/09/16

Claimant: Appellant (1)

Section 96.5-2-a – Voluntary Leaving

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant appealed from the October 26, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 15, 2016. The claimant participated in the hearing. Trish Raap, Senior Human Resources Generalist and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted to the record.

ISSUE:

The issue is whether the claimant's appeal is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on October 26, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 5, 2016. That date fell on a Saturday so the appeal was actually due November 7, 2016. The appeal was not filed until November 14, 2016, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

Ref 22

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 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.

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 section 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 October 26, 2016, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs