

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRELEN WILSON
Claimant

APPEAL 21A-DUA-01014-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136, Sec. 2102 – Pandemic Unemployment Assistance Benefits Eligibility

STATEMENT OF THE CASE:

The claimant, Trelen Wilson, appealed the assessment for Pandemic Unemployment Assistance (PUA) decision November 24, 2020 which denied benefits. A telephone hearing was held on April 19, 2021. The claimant participated personally. The administrative law judge took official notice of the administrative records. Exhibits D-1 and D-2 were entered into the record.

ISSUE:

Is the claimant eligible for Pandemic Unemployment Assistance?

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 November 24, 2020. (Exhibit D-1) The claimant received the decision in early-December 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 5, 2020. The appeal was not filed until February 9, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2) The claimant explained he saw the adverse decision, but he became distracted by other tasks such as transplanting evergreens and fixing his tractor.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is untimely and there are not reasonable grounds to consider it as timely. The administrative law judge 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).

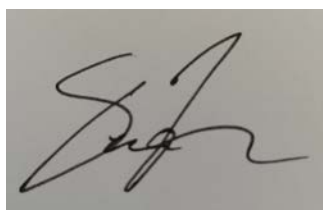
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. On his appeal letter, the claimant said he never received a decision letter. The claimant abandoned this argument at the hearing. During the hearing, the claimant said he received the disqualifying decision in early December 2020, but that he was distracted by his work. This delay would have excused the claimant from sending in his appeal in December. It does not excuse his appeal date being in February 2021 because he had ten days from date he received the disqualification decision to appeal and failed to do so.

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). While the claimant credibly argued the appeal was delayed, he conceded he did not file his appeal within ten days of receiving notice of disqualification. 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 November 24, 2020, assessment for PUA benefits is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Sean M. Nelson
Administrative Law Judge
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April 26, 2021
Decision Dated and Mailed

smn/scn