

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MONIQUE R FAIFERLICK**  
Claimant

**COMPASS ONE LLC**  
Employer

**APPEAL 17A-UI-13117-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/15/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 13, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. The claimant participated personally. The employer participated through Rob Peterson, general manager. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and notice of initial decision. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision resulting in disqualification was mailed to the claimant's last known address of record on November 13, 2017. The address of record effective November 13, 2017, as provided by the claimant was 3916 East 10th Street Des Moines, Iowa 50316. The claimant stated she moved in late October 2017, and updated her address with Iowa Workforce Development on November 20, 2017. Even though the claimant moved, she received the decision within the appeal period.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 23, 2017. Because November 23, 2017 was a holiday, the final day to appeal was extended to November 27, 2017. The appeal was not filed until December 20, 2017, which is after the date noticed on the unemployment insurance decision (Department Exhibit D-1).

The claimant stated she did attempt to file her appeal within the appeal period. The notice of initial decision contained instructions advising the claimant she could file her appeal online, by mail or fax (See initial decision). The decision provided the address to mail an appeal as:

Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines IA 50319

The claimant did not follow the directions contained on the notice of decision to file her appeal. Rather, she reportedly went to mail her appeal letter (she did not recall when) and did not have the mailing address. The claimant chose to go online and found the address of 430 East Grand Avenue in Des Moines to use as the address of appeal. This was not a valid mailing address for appeals and is a former, now closed, Iowa Workforce Development office. Consequently, her appeal was returned to her. The Iowa Workforce Development website also provides specific information about how to file an appeal, including the correct mailing address.

The claimant does not know when she received the returned mail containing her appeal. She stated she called IWD (date unknown) and was reportedly advised by IWD representative, Jim, she had to come into a local office to file her appeal. This information was not entirely accurate as the claimant had the option to file an appeal online. However, the claimant stated she could not file an appeal online because she could not get online and her account was locked out. She stated she waited a week or two to go into the local office because she needed a ride to Des Moines. She then filed her appeal on December 20, 2017 (Department Exhibit D-1), over three weeks after the final day to appeal.

When the claim was filed, the claimant was required to read the Unemployment Insurance Handbook online, or request and read a mailed copy. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook.

The September 2017, version of the Unemployment Insurance Claimant's Handbook, on pages 16-17 provides information about the appeals process including:

A written appeal can be mailed to:  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines IA 50319

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

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

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 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. 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. Bd. 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 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 claimant in this case acknowledged that even though the decision was mailed to her prior address, she did receive the initial decision within the prescribed period to appeal.

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant's 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 Iowa Admin. Code r. 871-24.35(2).

The administrative law judge is sympathetic to the claimant, but based on the evidence presented, concludes that the claimant's delay in filing her appeal was because she did not follow the instructions contained on the initial decision. The initial decision, claimant handbook (which the claimant agreed to read upon filing her claim) and Iowa Workforce Development website all contain instructions, including the correct mailing address, on where to file an appeal. The claimant did not follow the directions and mailed the appeal to an invalid address, which caused the appeal to be returned to her. The claimant then delayed filing her appeal for at least one to two more weeks, in light of having knowledge that her appeal had not been successfully filed, and it was after the prescribed due date.

The claimant could not provide specific information about the date she mailed her appeal to the incorrect address, or spoke to an IWD representative, who advised her to visit a local office to file her appeal since she was locked out online. The administrative law judge is not persuaded any misinformation that may have been provided by any representative would be relevant to the claimant's appeal, inasmuch as the prescribed period to appeal had already lapsed by the time the claimant first contacted IWD for guidance. The claimant then further delayed her appeal after speaking to the representative for another one to two weeks because of transportation issues.

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 November 13, 2017, (reference 01) 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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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