

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANDREA K STREIGLE**  
Claimant

**APPEAL NO. 22R-UI-03787-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA STATE UNIVERSITY**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 9, 2021, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on March 11, 2022. The claimant did participate. The employer did participate through attorney Heather Smith and witness Jason Fugere.

**ISSUES:**

Whether the appeal is timely?

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on February 9, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 19, 2021. The appeal was not filed until August 31, 2021, which is after the date noticed on the disqualification decision. Claimant stated she did not know if she received this decision. She further stated that she does keep a file of documents, but did not bring the file with her to work, even though she knew that this hearing was to occur today. Claimant stated that she did receive the decision that was dated April 9, 2022 and stated claimant had been overpaid FPUC benefits (Ref 04) 22R-UI-03789-B2-T. Claimant did not appeal this decision. Claimant eventually filed an appeal after two additional decisions dated August 18 (Ref 03 and 04) found claimant to additionally have been overpaid benefits. When claimant appealed these

overpayments, the underlying Able and Available matter indicated here was also deemed to have been appealed.

Claimant stated that she had a contract to work for employer and this educational provider's contract allowed for period off from work over the summers and over the holidays. Claimant was off from work on this holiday for a period between December 13, 2020 and December 26, 2020. Between December 27, 2020 and January 9, 2021 claimant afflicted or a family member was afflicted with Covid and she could not work.

Claimant was awarded PUA benefits for a period covering the December 27, 2020 through January 9, 2021 period she was off from work.

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

Iowa Code section 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 ten calendar days for appeal begin 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).

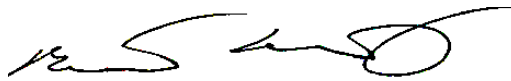
Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. At a bare minimum, claimant was informed as early as April 2021 about overpayment that she acknowledges, yet she did nothing to appeal this matter. Claimant knew how to appeal; she'd previously appealed another decision, and then appealed again to the Employment Appeals Board when she was not satisfied with an ALJ's decision, but chose not to act in these matters.

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 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 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 February 9, 2021, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Blair A. Bennett  
Administrative Law Judge

March 25, 2022  
Decision Dated and Mailed

bab/scn