

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MELISSA A HUDSON**  
Claimant

**APPEAL 17A-UI-12591-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/12/17  
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 22, 2017, (reference 02) unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's WBA in insured wages during or after the prior claim year. After due notice was issued, a hearing was held on December 29, 2017. Claimant participated. Department's Exhibit D-1 was received.

**ISSUES:**

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's WBA during or after the previous benefit year to become eligible for a second benefit year?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to the claimant's last known address of record on November 22, 2017. Claimant received the decision on November 27, 2017, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 2, 2017. The appeal was not filed until December 8, 2017, which is after the date noticed on the unemployment insurance decision.

The claimant's WBA in the prior claim year effective November 6, 2016, is \$303.00. The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning November 6, 2016. Since filing the prior year's claim, claimant earned wages in the total amount of \$2,203. This is not eight times her weekly benefit amount.

**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, 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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 § 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).

Even if claimant's appeal was timely, she is not eligible to receive benefits during the subsequent benefit year.

Iowa Code section 96.4(4)a-b-c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on

or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

b. For an individual who does not have sufficient wages in the base period, as defined in section 96.19, to otherwise qualify for benefits pursuant to this subsection, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under this subsection.

(1) Wages that fall within the alternative base period established under this paragraph "b" are not available for qualifying benefits in any subsequent benefit year.

(2) Employers shall be charged in the manner provided in this chapter for benefits paid based upon quarters used in the alternative base period.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Because the claimant did not demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning November 6, 2016, she is not eligible to receive benefits during the current claim year beginning November 12, 2017.

#### **DECISION:**

The November 22, 2017, (reference 02) unemployment insurance decision is affirmed. The appeal is not timely. The claimant is not eligible to receive benefits during the current claim year beginning November 12, 2017. If claimant does earn eight times the prior claim year's WBA in insured wages she may present evidence of that to IWD to determine eligibility.

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Christine A. Louis  
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Decision Dated and Mailed

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