

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHARON K PETERSEN
Claimant

APPEAL NO: 20A-UI-07606-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

871 IAC 24.9(1)b – Timely Appeal of Monetary Determination
Iowa Code section 96.3(4) – Monetary Determination

STATEMENT OF THE CASE:

The claimant appealed from the April 3, 2020, reference 04, monetary record that determined the claimant's monetary record was correct. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder on August 12, 2020. The claimant participated in the hearing.

ISSUE:

The issue is whether the claimant filed a timely appeal from the monetary record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the records, finds that: A monetary record was mailed to the claimant's last known address of record on April 3, 2020. The claimant received the record. The record contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date of mailing. The appeal was not filed until June 25, 2020, which is after the expiration of the ten-day appeal period.

REASONINGS AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.9(1)b provides:

Monetary Determinations.

24.9(1)b The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

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 A2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). This would apply to the date of the monetary record as well.

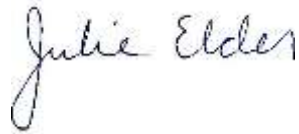
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 April 3, 2020, monetary record is affirmed. The appeal in this case was not timely and the monetary record remains in effect.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 25, 2020
Decision Dated and Mailed

je/sam