

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE FOWLER**  
Claimant

**APPEAL NO: 16A-UI-05184-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS MANUFACTURING CO**  
Employer

**OC: 03/20/16**  
**Claimant: Appellant (1-R)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages  
Section 96.3-7 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 13, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 18, 2016. The claimant participated in the hearing. Trisha Taylor, Human Resources Manager and Todd Richardson, Employer Representative, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

The issue of whether the claimant's appeal is timely was not listed on the hearing notice. The parties waived their right to notice of the timeliness issue.

**ISSUE:**

The issue is whether the claimant's appeal is timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on April 13, 2016. The decision found the claimant was still employed at the same hours and wages effective March 20, 2016. The claimant received the decision but most likely misplaced it or her daughter misplaced it after getting the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 23, 2016. That date fell on a Saturday so the appeal was due Monday, April 25, 2016. The appeal was not filed until May 6, 2016, which is after the date noticed on the disqualification decision. The claimant has not provided a good-cause reason for her late appeal. Therefore, the administrative law judge must conclude the claimant's appeal is not timely.

The claimant was laid off due to a lack of work effective April 22, 2016. That issue has not been heard or adjudicated by the Claims Section of Iowa Workforce Development.

## REASONING AND CONCLUSIONS OF LAW:

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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).

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).

The issue of the claimant's separation from this employer has not yet been heard or adjudicated by the Claims Section. That issue is remanded to the Claims Section of Iowa Workforce Development for an initial determination and adjudication.

**DECISION:**

The April 13, 2016, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied effective March 20, 2016. The issue of the claimant's separation from employment with Sears Manufacturing is remanded to the Claims Section for an initial determination and adjudication.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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