

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L JENNINGS**  
Claimant

**APPEAL NO. 11A-UI-09781-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/15/11**

**Claimant: Appellant (1)**

871 IAC 24.2-1-e – Failure to Report  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Jennifer L. Jennings (claimant) appealed a representative's June 27, 2011 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits because she had not responded to an Agency notice to respond to an issue relating to her eligibility. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on August 18, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Is the claimant disqualified from receiving unemployment insurance benefits for a failure to report as directed?

**DISPOSITION:**

Affirmed.

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last known address of record on June 27, 2011. No evidence was provided to rebut the presumption that the claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 7, 2011. The appeal was not filed until July 25, 2011, which is after the date noticed on the disqualification decision. The appeal was made at that time in response to a subsequent representative's decision issued on July 20, 2011 (reference 03), which restored the claimant's eligibility as of July 17; the claimant appealed upon receiving that decision because she believed she was entitled to benefits prior to July 17, even though no appeal had yet been made of the June 27 (reference 02) decision.

The claimant established an unemployment insurance benefit year effective May 15, 2011. On June 16, 2011, the Agency sent the claimant a notice that she needed "to complete an additional application for job search assistance," and that she needed to report to the local office or complete the online application to register for work by 3:30 p.m. on June 23, 2011. When she did not do so, the representative's disqualification decision was issued on June 27.

When the claimant realized she was not receiving unemployment insurance checks, she contacted the Agency on July 19; she was then informed that she had not successfully completed the necessary registration. She was assisted in completing the necessary information, resulting in the issuance of the representative's decision on July 20 (reference 03) indicating that she was again eligible to receive unemployment insurance benefits effective July 17, 2011.

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

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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. 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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the appellant's failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits. A claimant can be found ineligible for unemployment insurance benefits for a failure to report as required.

871 IAC 24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting and the payment of benefits, provided the individual is otherwise eligible, shall be on a biweekly basis by mail if the claimant files a Form 60-0151.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

The claimant did not report or cure the deficiency in her registration by June 23 as directed, and did not do so until July 19, 2011. Benefits were properly denied for the intervening benefit weeks.

**DECISION:**

The representative's June 27, 2011 decision (reference 02) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. The claimant did not report and register as directed by June 23; she did do so on July 19. The claimant is not qualified to receive unemployment insurance benefits during the intervening benefit weeks.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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