

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHAYNA E BRUCE**  
Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL 18A-UI-09265-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/07/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Shayna E. Bruce (claimant) filed an appeal from the August 23, 2018, reference 06, unemployment insurance decision that determined she was overpaid unemployment insurance benefits for the week ending August 4, 2018. After due notice was issued, a telephone conference hearing was held on September 21, 2018 and was consolidated with the hearings for appeal numbers 18A-UI-09263-SC-T, 18A-UI-09264-SC-T, and 18A-UI-09266-SC-T. The claimant participated. The Claimant's Exhibit A and the Departments Exhibits D1 through D4 were admitted into the record.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her original claim for unemployment insurance benefits effective January 7, 2018. When making her continued claim for benefits, the claimant reported zero job searches for the week ending February 17. On February 20, an unemployment insurance decision, reference 03, was mailed to the claimant warning her that she needed to make two job contacts each week she claimed benefits but did not deny benefits for the week ending February 17. The decision also contained notification that it became final unless an appeal was filed by March 2. The claimant received the warning but did not file an appeal. The warning has become final agency action.

On August 1, the claimant was offered a job with Pella Corporation which she accepted. The claimant ceased searching for work once she accepted the new position, but continued to claim for unemployment insurance benefits until she exhausted her claim on August 11. The claimant filed for and received \$263.00 in unemployment insurance benefits for the week ending August 4, 2018. The claimant began her new job on August 20.

On August 23, 2018, the unemployment insurance decision, reference 06, was mailed to the claimant's last known address of record. The claimant's mail from Des Moines, Iowa usually arrives within two to three days. The claimant is not sure when she received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by Sunday, September 2, 2018, or the next business day, in this case Tuesday, September 4, 2018. The appeal was not filed until September 5, 2018, which is after the date noticed on the disqualification decision, because the claimant has a young child with health problems, she does not check her mail on a daily basis, and is not the only one who brings in the mail so sometimes her mail gets misplaced.

## **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:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 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. 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 claimant's decision not to check her mail on a daily basis or open it due to other personal issues does not establish good cause for the late filing. The claimant has not established that her failure to file a timely appeal was 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). As the appeal was not timely filed, 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).

#### **DECISION:**

The August 23, 2018, reference 06, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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