

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JULIE M RUPERT**  
Claimant

**APPEAL 17A-UI-08133-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/01/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4(3) –Availability for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 13, 2017 (reference 02) unemployment insurance decision that stated claimant was not eligible for benefits from June 11, 2017 through June 24, 2017 because she was on vacation and not available for work. The claimant was properly notified of the hearing. A telephone hearing was held on August 28, 2017. The claimant, Julie M. Rupert, participated personally. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Is the claimant's appeal timely?  
Was the claimant available for work from June 11, 2017 through June 24, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision finding claimant was not eligible for unemployment insurance benefits was mailed to claimant's last known address of record on July 13, 2017 (reference 02). This decision found that the claimant was not eligible for benefits for two weeks (June 11, 2017 through June 24, 2017) because claimant was on vacation and was unavailable for work. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 23, 2017. The claimant did not file a timely appeal to this decision until she received an overpayment decision dated August 1, 2017 (reference 03). Claimant had agreed that she would not be paid benefits for the two weeks she was on vacation and this is why she did not appeal the July 13, 2017 (reference 02) decision. Claimant only filed an appeal because of the overpayment decision she received that was dated August 1, 2017 (reference 03). The appeal for the decision dated July 13, 2017 (reference 02) was postmarked on August 3, 2017 when claimant mailed her appeal to the Appeals Bureau. August 3, 2017 is after the appeal deadline of July 23, 2017.

Claimant left for vacation and was out of the country beginning June 8, 2017 and returned June 23, 2017. She was not available for work during the time she was out of the country.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Claimant did receive the decision in the mail prior to the appeal deadline. The appeal in this case was mailed to the appeals bureau with a postmark of August 3, 2017.

The record in this case shows that more than ten calendar days elapsed between the mailing date of the decision (July 13, 2017) and the date this appeal was filed (August 3, 2017). 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).

Claimant's appeal of the July 13, 2017 (reference 02) decision is untimely. The claimant has not shown any good cause for her failure to comply with the jurisdictional time limit to file an

appeal to the July 13, 2017 (reference 02) decision or that the delay 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). Claimant had accepted that she was not eligible for benefits from June 11, 2017 through June 24, 2017 due to her unavailability because she was on vacation. Because the appeal is untimely, the administrative law judge lacks jurisdiction to make a determination with respect to whether claimant was ineligible for benefits due to her unavailability as that decision determined. Iowa Code § 96.6(2).

If a higher authority finds that claimant's appeal to the July 13, 2017 (reference 02) decision was timely, the administrative law judge would find that the claimant was unavailable for work and ineligible to receive benefits from June 11, 2017 through June 24, 2017 due to her being on vacation out of the county.

Iowa Code § 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

## **DECISION:**

The July 13, 2017 (reference 02) unemployment insurance decision is affirmed. The claimant has failed to file a timely appeal, and the unemployment insurance decision finding claimant was not available for work from June 11, 2017 through June 24, 2017 due to being on vacation shall stand and remain in full force and effect.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs