

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CAMISHA STEVENSON**

Claimant

**APPEAL 20A-UI-12714-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**

Employer

**OC: 04/19/20**

**Employer: Respondent (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Code § 96.4(3) Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

Iowa Code § 96.19(38) Total and Partial Unemployment

Iowa Code § 96.7(2)A(2) Employer Contributions and Reimbursements

PL116-136, Sec. 2104 – Is the claimant eligible for FPUC? Is the claimant overpaid for FPUC?

**STATEMENT OF THE CASE:**

The employer, Allen Memorial Hospital, filed an appeal from the July 27, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2020. The claimant participated. The employer participated through Human Resources Business Partner Mary Peterson. The administrative law judge took official notice of the following administrative records: KCCO, DBRO, and WAGE-A.

**ISSUE:**

Whether the employer filed a timely appeal? Whether there is good cause to treat the appeal as timely?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On July 27, 2020, a representative issued a decision, reference 01, which held claimant eligible for unemployment insurance benefits. The decision states it would become final unless an appeal was postmarked by August 6, 2020, or received by the Appeals Section on that date. The claimant’s appeal was mailed to the Appeals Section on October 15, 2020.

The employer maintains it timely appealed the July 27, 2020 representative’s decision when it sent an email to Iowa Workforce Development on July 30, 2020, acknowledging receipt of the representative’s decision and informing it of claimant’s separation from employment on July 12, 2020 (Exhibit D-1). The email shows it was sent to Iowa Workforce Development’s UI Claims Help forum on July 30, 2020. Employer subsequently mailed the email and the representative’s

decision without a letter to Iowa Workforce Development's Customer Service Department on October 13, 2020. This letter was re-routed to be received by the Appeals Section on October 15, 2020.

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

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 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).

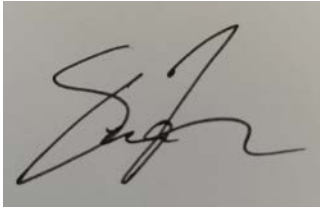
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 an appeal postmarked as timely.

The employer did reach out to Iowa Workforce Development in general prior to the appeal date, but it did not send in what constitutes its appeal in this case to the Appeals Section until October 15, 2020. The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the employer's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claim for unemployment insurance benefits.

**DECISION:**

The employer failed to file a timely appeal from representative's decision regarding benefits dated July 27, 2020 (reference 03). That decision, which concluded that the claimant was eligible to receive unemployment insurance benefits, remains in full force and effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Fax (515) 725-9067

December 21, 2020  
Decision Dated and Mailed

smn/scn