

2. *Initial determination.* ... 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.

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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The Claimant did not receive the decision until July 12, which is two days after it was due. The question, then, is how long the Claimant should be given to effect his appeal. There are several possibilities. Perhaps the Claimant should be given no longer than reasonably necessary to make a bare-bones appeal. Perhaps the Claimant should be given an additional seven days on the theory that mail usually gets where it is going in three days. Perhaps the Claimant should be given as many days as its receipt is late. Perhaps the Claimant should be required to file on the very date of receipt. All are defensible yet all of these share one problem: how is the Claimant supposed to know when the deadline is? The decision gives a date certain. If that date is in the past the Claimant is given no clue as to what alternative date to use. Yet *some* deadline must apply – the Claimant cannot wait an eternity to appeal. To our mind the easiest and most workable rule, as well as the fairest to the parties, is to use ten days from receipt as the new deadline where Workforce or Post Office delay has caused the original deadline to run without notice to the Claimant. This new deadline is adequately short as to promote prompt action while also giving the Claimant plenty of notice. A claimant who tried to claim more time than this could be fairly answered by saying that the mailing error should not put the claimant in a *better* position than he would have been without error. An employer who tried to argue for less time could be fairly answered by saying the mailing error should not put the Claimant in a *worse* position than he would have been without error. Here the Claimant's appeal was within ten days of the late receipt, and we find the Claimant's appeal timely. The Administrative Law Judge adopted our same reasoning but said that the deadline ran ten days later on Saturday, July 22, 2017. Under Iowa Code §4.1(34), the deadline is extended until the next Monday, which is July 24. The appeal is therefore timely.

DECISION:

The administrative law judge's decision dated August 10, 2017 is **REVERSED AND REMANDED**. The decision of the administrative law judge is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative

law judge shall issue a

decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

We note for the Claimant's benefit that the decisions in his other cases which were appealed us are unaffected by the outcome of this case.

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RRA/fnv