

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT A WALKER**  
Claimant

**APPEAL NO: 14A-UI-03517-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/02/14**

**Claimant: Appellant (1)**

871 IAC 24.2(1)a & h(1) & (2) - Backdating  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Scott A. Walker (claimant) appealed a representative's March 20, 2014 decision (reference 01) that denied his request to backdate his claim for unemployment insurance benefits prior to March 2, 2014. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 23, 2014. The claimant participated in the hearing and presented testimony from one other witness, Jessica Enriquez. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on March 20, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 30, 2014, a Sunday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, March 31. The appeal was not filed until it was received by the Appeals Section on April 2, 2014, which is after the date noticed on the disqualification decision.

The claimant had attempted to submit his appeal via his employer's fax machine on March 27. The fax had gone through the machine, and the claimant believed that meant that the fax had been successfully transmitted. However, the fax transmission report for that machine showed that the result was "NG," no good. The claimant did not realize until he called the Appeals Section on or about April 1 that the transmission had not been successful; he therefore resent the appeal on April 2, which was then received and considered filed.

## 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 statutory method for filing an appeal is by mail so that the appeal can be postmarked. The option for faxing an appeal is simply a convenience allowed to the claimant with the understanding that if using that method, the protest must be received by the due date. 871 IAC 24.35(1)b. It is therefore the claimant's obligation to establish that the transmission was successful, not only that he made an attempt before the deadline for filing the appeal. The appellant did have a reasonable opportunity to file a timely appeal but failed to successfully do so.

While in this case it is apparent that there would be little or no harm that would come from treating the appeal as timely, and the claimant's employer actually supports his attempt to backdate his claim so that he could receive benefits for a period of layoff, the administrative law judge does not have discretion to ignore the law or rule contrary to the law. *Lenning v. Iowa Dept. of Transp.*, 368 N.W.2d 98 (Iowa 1985).

The administrative law judge concludes that 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).

**DECISION:**

The representative's March 20, 2014 decision (reference 01) 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's request to backdate his claim is denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs