IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VALERIE A STOKES Claimant	**APPEAL NO: 13A-UI-02787-DT**
	ADMINISTRATIVE LAW JUDGE DECISION
FOCUS FAMILY OPTIONS & COM SUPP Employer	
	OC: 05/20/12 **Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Valerie A. Stokes (claimant) appealed a representative's June 18, 2012 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a May 8, 2012 separation from employment from Focus Family Options & Community Supports (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:30 a.m. on April 4, 2013. The claimant received the hearing notice and responded by calling the Appeals Section on April 4, indicating that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. The employer responded to the hearing notice and indicated that Derek Laney would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Mr. Laney agreed that the administrative law judge should make a determination based upon a review of the available information. Based on a review of the available information 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 June 18, 2012. No evidence was provided to rebut the presumption that the claimant received the decision within a short time thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 28, 2012. The appeal was not filed until it was postmarked on March 5, 2013, which is after the date noticed on the disqualification decision. The only indication as to the reason for the delay was a general statement that the claimant had been going through a period of difficulties, loss, and pain.

The administrative law judge takes administrative notice of the fact that the claimant has had some other employment with another employer since May 8, 2012, specifically, employment with Developmental Services in the fourth quarter 2012 in which the claimant earned $1,002.00. The claimant had originally established her claim for unemployment insurance benefits effective May 20, 2012; the claim was reopened effective January 20, 2013. Her weekly benefit amount was set as $220.00. With the available information, the administrative law judge cannot find that the claimant has requalified by earning at least $2,200.00 in other employment since the ending of the employment with this employer effective May 8, 2012.

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 appellant did have a reasonable opportunity to file a timely appeal.

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).

If the claimant does have evidence to establish that she has earned at least $2,200.00 in other employment since May 8, 2012, she can present that evidence at any time to a representative at a local Agency office and request a determination as to whether she has requalified since the separation with this employer.

DECISION:

The representative's June 18, 2012 decision (reference 04) 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. Benefits are withheld until such time as the claimant can establish that she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is then otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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