

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIN E THOMAS
Claimant

APPEAL 20A-UI-03541-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

871 IAC 24.9(1)b – Timely Appeal of Monetary Determinations
Iowa Code § 96.3(4) – Monetary Determination
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year

STATEMENT OF THE CASE:

The claimant appealed from the April 3, 2020 reference 01, corrected monetary record that found she was not eligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on May 19, 2020. The claimant participated personally. Exhibits D-1 and D-2 were admitted into the record. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant filed a timely appeal from the monetary record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. A corrected monetary record was mailed to the claimant's last known address of record on April 3, 2020. The claimant's base period of employment includes the fourth quarter of 2019 through the third quarter of 2019. She earned wages in each quarter of her base period in the State of Nebraska. The department's records showed insured wages of \$346.06 in the fourth quarter of 2018, \$471.55 in the first quarter of 2019, \$408.75 in the second quarter of 2019, and \$176.00 in the third quarter of 2019. The claimant also earned \$444.90 in the second quarter of 2019, from Wash Daze. The claimant agreed that the monetary record properly and correctly reflected her earnings during this period. She also agreed with the dependent amount.

The claimant received the record within ten days of April 3, 2020. She disagreed with not being monetarily eligible for unemployment insurance benefits. The record contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date of mailing. On an unknown date, the claimant sent an appeal to the Iowa Department of Human Services (IDHS) by mistake. IDHS thought she was appealing her food stamps and contacted

her on an unknown date. When the error was discovered, IDHS instructed her to appeal to the proper agency on an unknown date. The appeal was not filed until April 29, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.9(1)b provides:

Monetary Determinations.

24.9(1)b The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

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). This would apply to the date of the monetary record as well.

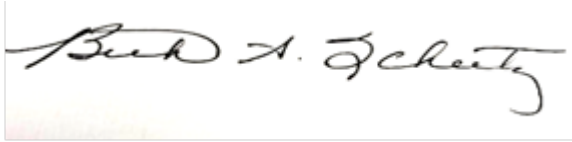
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from determinations within the time allotted by statute, and that the administrative law 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 a timely appeal. In this case, the claimant sent her appeal to the wrong agency. It is unknown when she sent her appeal letter to IDHS, when IDHS notified her of the mistake, or when IDHS told her to file the appeal with the department.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The April 3, 2020 reference 01, corrected monetary record is affirmed. The appeal in this case was not timely, and the monetary record remains in effect.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

May 21, 2020
Decision Dated and Mailed

bas/scn