

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE M MADDEN**  
Claimant

**APPEAL NO: 13A-UI-02271-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/24/12**  
**Claimant: Appellant (1)**

Section 96.3-5-B – Training Extension Benefits (TEB)  
871 IAC 24.40 – TEB Requirements  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 10, 2013, reference 04, that held her request for TEB is denied effective December 9, 2012. A telephone hearing was held on March 25, 2013. The claimant participated. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on January 10, 2013 with an appeal deadline date of January 20, 2013 (Sunday) that is extended to the next working day January 21. The claimant submitted an appeal to her local Workforce center on February 19.

The department issued a decision dated January 22, 2013, reference 05, that allowed claimant department approved training (DAT) benefits for the period from October 14, 2012 through June 22, 2013. The department record shows claimant received UI benefits through the week ending January 26, 2013. She made separate applications for TEB and DAT on the same day December 14, 2012. Claimant knew there were separate department education programs. The claimant's last benefit week is the week ending January 26, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week

with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . 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 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 Supreme 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 a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date (extended to January 21) and reading the appeal instructions. The claimant offers confusion about separate department decisions.

The decision in this matter that denied claimant TEB and set an appeal deadline of January 20 was before the department mailed the DAT decision on January 22. In effect claimant knew she was denied TEB before the department mailed the DAT decision. She ceased receiving any benefit the week ending January 26 that should have been a red flag she was no longer eligible due to the decision in this matter. No good cause for the appeal delay has been established.

**DECISION:**

The department decision dated January 10, 2013, reference 04, is affirmed. The claimant failed to file a timely appeal, and the department decision she is denied TEB remains in force and effect.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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