

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIFFANY L YAZEL**  
Claimant

**APPEAL 21A-UI-19069-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/06/21  
Claimant: Appellant (1)**

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Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant/Appellant, Tiffany L. Yazel, filed an appeal from the June 17, 2021 (reference 01) unemployment insurance decision that denied benefits effective June 6, 2021 based on a finding claimant had not been paid insured wages during or after the previous claim year in an amount of at least eight times the weekly benefit amount of the previous claim year.

After due notice was issued, a hearing was held on October 20, 2021. Claimant participated personally. Official notice was taken of the administrative record. Department Exhibit 1 was admitted.

**ISSUES:**

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's weekly benefit amount during or after the previous benefit year to become eligible for a second benefit year?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

An initial decision (reference 02) was mailed to the claimant's/appellant's address of record on June 17, 2021. The decision contained a warning that an appeal must be filed by June 27, 2021. The decision also directed the appellant to call the customer service line for assistance. Appellant received the decision with the appeal period. Appellant filed the appeal on August 23, 2021 (See Department Exhibit 1). The appeal was mailed. No evidence was presented that claimant's delay in appealing was due to agency or postal service error.

At the hearing, claimant referenced an unfavorable decision with Vermeer. A review of the administrative records reflect on August 13, 2021 a fact-finding interview was conducted with an IWD deputy and claimant did not appear. However, the reference 01 decision issued after the interview did not deny benefits.

## REASONING AND CONCLUSIONS OF LAW:

The issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document 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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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. Iowa Dept of Job Serv.*, 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. Iowa Dept of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dept of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). Claimant's appeal was mailed on August 23, 2021.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The June 17, 2021 (reference 01) unemployment insurance decision that denied benefits effective June 6, 2021 based on a finding claimant had not been paid insured wages during or after the previous claim year in an amount of at least eight times the weekly benefit amount of the previous claim year is **AFFIRMED**. The claimant failed to file a timely appeal and therefore her appeal is dismissed.

If claimant does earn eight times the prior claim year's WBA in insured wages she may present evidence of that to IWD to determine eligibility.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

October 28, 2021  
Decision Dated and Mailed

jlb/ja

**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, but who are unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.