record on June 21, 2005 and received by employer representative TALX UC eXpress at its St. Louis facility shortly thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 1, 2005. TALX scanned the decision into its computer system and routed the decision via computer to Claim Service Representative Gayle Woodard. Ms. Woodard received the decision via computer on June 24. Wal-Mart had already provided TALX UC eXpress with the appropriate separation information. Ms. Woodard took no further action on the decision until June 29, when she contacted Wal-Mart to inquire whether the employer wished to appeal the decision. At 4:42 p.m. on June 30, Ms. Woodard "processed" the employers appeal on her computer. Ms. Woodard entered commands to instruct the computer to generate an appeal letter, fax the appeal letter to the Appeals Bureau fax machine, and mail a copy of the appeal letter to the Appeals Bureau. Neither a mailed letter nor a faxed appeal letter was received at Iowa Workforce Development. After "processing" the employer's appeal on June 30, the employer took no further steps to follow up on the appeal until September 9, when Ms. Woodard mailed a letter to the Appeals Bureau asking that a hearing be set. The September 9 letter was date stamped by the TALX UC eXpress postage meter on September 9 and received by the Appeals Bureau on September 13. On September 14, the Appeals Bureau set the matter for hearing and mailed notice to the employer representative. Ms. Woodard indicates that in her experience with Iowa Workforce Development, it would be "rare" for the Appeals Bureau to take two months to set a hearing in response to an appeal. Ms. Woodard indicates that her experience has been that it takes two to four weeks for a hearing to be set. Ms. Woodard and the employer representative had no safeguards in place to prompt the employer representative to take further action on the "processed" appeal, absent correspondence from the employer or from Iowa Workforce Development. The appeal was not filed until September 9, 2005, which was more than two months after the date noticed on the June 21, 2005, reference 01, decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of

> the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date the decision is mailed. 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it was received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 IAC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence in the record establishes 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 evidence further indicates that the employer representative did not, in fact, submit an appeal to the Appeals Bureau by the deadline. Ms. Woodard testified that she instructed the computer to submit the appeal both by mail and by fax. Neither a fax nor a mailed letter was received at the Appeals Bureau. It is highly unlikely that both forms of appeal would have failed to arrive at the Agency if they were, in fact, submitted. The evidence further indicates that the employer representative unreasonably waited in excess of two months to take any additional steps to follow up on the appeal.

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. See 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).

DECISION:

The Agency representative's June 21, 2005, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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