

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SAMMY D BACON**  
Claimant

**APPEAL 18A-UI-02995-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 10/17/10  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the April 27, 2011 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was not available for work because he was in jail. The parties were properly notified of the hearing. A telephone hearing was held on March 26, 2018. The claimant, Sammy D. Bacon, participated. Kevan Irvine participated on behalf of Iowa Workforce Development (“IWD”). The administrative law judge took administrative notice of the claimant’s unemployment insurance benefits records.

**ISSUES:**

Did claimant file a timely appeal?  
Is the claimant able to work and available for work effective February 8, 2011?

**FINDINGS OF FACT:**

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

A decision was mailed to claimant on April 27, 2011 (reference 02) that found claimant was ineligible for benefits due to him being in jail. Claimant received this decision but was unaware as to the date he received it. Claimant mailed a letter appealing the decision and notifying IWD that he was incarcerated and not claiming benefits. This letter was never received by IWD. Claimant was unaware what date he mailed the letter but believes it was approximately one week after receiving the decision dated April 27, 2011 (reference 02).

Claimant was incarcerated at Oakdale and Clarinda Correctional Facility beginning February 8, 2011 to October 13, 2011. Claimant filed another appeal via fax on March 6, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant’s appeal is untimely.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Bd. 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 the appeal on March 6, 2018 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 Dep't 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 Dep't 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).

Iowa Admin. Code r. 871—24.35 (1) and (2) provide:

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

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service 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 is 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.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)“a” and “b,” on the date it is received by the division.

(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 division 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.

In this case, there was no appeal received by IWD in 2011. As such, there is no postmark, postage meter mark or date of completion from an appeal in 2011. Further, claimant was unable to provide competent evidence (in addition to the testimony of the sender) as to the date that his appeal was mailed in 2011 or that the failure to file a timely appeal was due to delay or other action of the United States Postal service pursuant to Iowa Admin. Code r. 871-24.35(2). There has to be more than just the “testimony of the sender” in order to establish competent evidence as to the date the appeal was mailed in 2011. *Lange v. Iowa Dep’t of Revenue*, 710 N.W.2d 242, 247-49 (Iowa 2006) and Iowa Code § 622.105.

The administrative law judge 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 whether claimant was able to and available for work. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979) and *Franklin*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The April 27, 2011 (reference 02) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs