

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA H GANSEN-HENSE**  
Claimant

**APPEAL NO: 15A-UI-07509-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOSEPH L ERTL INC**  
Employer

**OC: 05/31/15  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Amanda H. Gansen-Hense (claimant) appealed a representative's June 19, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Joseph L. Ertl (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 11, 2015. The claimant participated in the hearing. Megan Egan appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on June 19, 2015. The claimant received the decision, albeit not until Saturday, June 27. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 29, 2015, which was the following Monday. The appeal was not filed until it was emailed on Tuesday, June 30, 2015, which is after the date noticed on the disqualification decision. The reason for the delay was that despite the instructions on the backside of the representative's decision the claimant was not sure what to do to appeal, and so waited until she could speak with her mother on the evening of June 29.

**REASONING AND CONCLUSIONS OF LAW:**

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides

that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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).

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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. Rule 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. While there may have been some delay in the claimant receiving the representative's decision, she did receive it a few days before the deadline. The appeal instructions, pursuant to the statute, do not provide for ten days after the date of receipt of the decision for appeal, but rather ten days from issuance. She still had adequate time to do so on or by June 30 when she received the decision on June 27. The appellant did have a reasonable opportunity to file a timely appeal but failed to do so.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The representative's June 19, 2015 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs