

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAXWELL J SAVAGE**  
Claimant

**APPEAL NO. 18A-UI-02505-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 12/31/17**  
**Claimant: Appellant (1)**

Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Maxwell J. Savage, the claimant, filed an appeal from a representative's decision dated February 8, 2018, reference 04, which denied unemployment insurance benefits finding that the claimant was discharged on September 27, 2017 for excessive unexcused absenteeism. After due notice was issued, a hearing was held by telephone on March 21, 2018. Claimant participated. The employer participated by Mr. Ross Zutterlund, Store Manager.

**ISSUE:**

Whether the appeal filed was timely.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification decision was mailed out to the claimant's last known address of record on February 8, 2018. The decision was mailed to 1516 S. 5th Street, Keokuk, Iowa 52632-5459, the address of record that Maxwell Savage had given to Iowa Workforce Development for receipt of official correspondence. At the time the decision was mailed, Mr. Savage had relocated to the state of Florida, but the claimant had not informed either Iowa Workforce Development or the US Postal Service of a change of address. The decision contained a warning that an appeal must be postmarked or received by the Appeal Section by February 18, 2018. The appeal was not filed until February 23, 2018 which is after the date notice on the disqualification decision. Mr. Savage did not initiate a change of address until March, 2018. The claimant's failure to change his address caused delay in Mr. Savage's appeal.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The delay was occasioned by Mr. Savage failing to change his address of record with Iowa Workforce Development or the US Postal Service and the decision being sent to an address where Mr. Savage no longer resided.

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 pursuant to 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 decision of the representative dated February 8, 2018, reference 04, is affirmed. The appeal in this case was not timely and the decision of the representative shall stand and remain in full force and effect.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn