

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MANUEL L SEGOVIA**  
Claimant

**APPEAL NO: 12A-UI-07429-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 12/26/10**  
**Claimant: Appellant (4)**

Section 96.6-2 - Timeliness of Appeal  
Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Manuel L. Segovia (claimant) appealed a representative's January 18, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits as of December 4, 2011 because of not being able and available for work in connection with his employment with Jeld-Wen, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on July 16, 2012. This appeal was consolidated for hearing with two related appeals, 12A-UI-07430-DT and 12A-UI-07833-DT. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Based on a review of the available information 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 January 18, 2012. No evidence was provided to rebut the presumption that the claimant received the decision within a few days thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 28, 2012. The appeal was not filed until it was hand-delivered to a local Agency office on June 22, 2012, which is after the date noticed on the disqualification decision. The appeal appears to have been filed at that time in response to the receipt of the two resulting overpayment decisions issued on June 13, 2012 [OC 12/26/10 – reference 01 (the subject of appeal 12A-UI-07430-DT) and OC 12/25/11 – reference 01 (the subject of 12A-UI-07833-DT)]. No explanation was provided as to why the claimant had not previously appealed the January 18, 2012 disqualification decision.

## 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). 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 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. 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. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the appellant's 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). Therefore, the decision that the claimant was not able and available for work and not eligible to receive unemployment insurance benefits as of December 4, 2011 until that decision was appealed and evidence provided of a change in his availability has become final and is not subject to change at this time, even if the decision may have been incorrect in whole or in part.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. The January 18, 2012 decision specified that the disqualification went into effect as of December 4, 2011, and that "if the circumstances have

changed and you believe the disqualification can be removed, you should contact your local workforce development center . . . .” When the claimant made his appeal on Friday, June 22, 2012, he provided information indicating that he is no longer subject to an impediment to his being able and available for work. As of the week beginning June 24 and dates forward, the disqualification imposed by the January 18, 2012 decision is removed. For future weeks, benefits are allowed, if the claimant is then otherwise eligible.

**DECISION:**

The representative’s January 18, 2012 decision (reference 01) is affirmed as modified. 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 from December 4, 2011 through June 23, 2012. As of June 24, 2012 benefits are allowed, if the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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