

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KERRY SHACKELFORD**

Claimant

**APPEAL 20A-UI-07725-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPECIALTY GRAPHICS INC**

Employer

**OC: 04/05/20**

**Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

On July 10, 2020, the employer filed an appeal from the June 22, 2020, (reference 01) unemployment insurance decision that allowed benefits and found the employer chargeable. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2020. Claimant participated personally. Employer participated through owner Scott Gaulter. Department Exhibit 1 was admitted into the record.

**ISSUES:**

Is the appeal timely?  
Is the claimant eligible for total or partial unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?  
Was the claimant overpaid unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 22, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to employer allowing benefits and holding employer liable for potential benefit charges. The decision warns that an appeal is due by July 2, 2020. There is no evidence indicating employer did not receive the decision within the appeal period. Employer filed the appeal on July 10, 2020, along with an appeal of a number of other, similar decisions.

Since filing this claim, claimant has received benefit payments in the second and third quarters of 2020. Iowa Workforce Development has announced it will relieve ALL employers of benefit charges for the second quarter of 2020. Iowa Workforce Development has not made such an announcement for the third quarter of 2020 as of the date of the scheduled hearing, but may do so in the future.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the employer's appeal is untimely.

Iowa Code section 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. 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 this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from unemployment insurance 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further 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 the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

Therefore, the decision appealed will remain in effect. However, the administrative law judge wants to clarify that Iowa Workforce Development has relieved employer of all benefit charges for the second quarter and still may do so for the third quarter and beyond. Additionally, employer could only potentially be liable for regular unemployment insurance benefits. Employers are NOT liable for any Federal Pandemic Unemployment Compensation benefits (the extra \$600 federally funded benefit payment).

**DECISION:**

The June 22, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Christine A. Louis  
Administrative Law Judge  
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August 20, 2020  
Decision Dated and Mailed

cal/sam