

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK E DAILEY**  
Claimant

**APPEAL NO. 15A-UI-11429-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/23/15  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.2(1)a, h – Backdating of Claim

**STATEMENT OF THE CASE:**

Rick E. Dailey, the claimant, filed an appeal from a representative's decision dated September 28, 2015 (reference 01) which denied the claimant's request to backdate his claim prior to September 20, 2015. After due notice was issued, a telephone hearing was held on October 29, 2015. Mr. Dailey participated personally.

**ISSUE:**

At issue in this matter is whether the appeal filed herein 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 to the claimant's last-known address of record on September 28, 2015. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by Appeals Section by October 8, 2015. The appeal was not filed until October 14, 2015; which is after the date noticed on the disqualification decision.

Mr. Dailey had experienced difficulty in entering his claim for benefits during the week ending September 19, 2015. He had attempted to file for benefits that week twice. During a telephone conversation with a customer service representative of the Agency, the claimant believed that the issue had been resolved. The adjudication determination, on the issue of whether Mr. Dailey had presented sufficient evidence to justify his request to backdate his claim, was issued seven days after the claimant's telephone conversation with the representative. The determination found that the claimant had not presented sufficient grounds for the backdating. Although the adjudicator's decision previously stated that his request to backdate the claim had been denied, it had been issued after his conversation with the representative. Mr. Dailey did not file an appeal within the statutory time period, apparently believing that the adjudicator's determination had been issued in error. The determination stated that the decision would become final unless an appeal was received or postmarked by October 8, 2015.

## REASONING AND CONCLUSIONS OF LAW:

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

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 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 Supreme Court of Iowa has declared there is a mandatory duty to file appeals from representative's 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 Department of Job Service, 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 Department of Job Service, 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 administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Agency error or 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.

**DECISION:**

The representative's decision dated September 28, 2015 (reference 01) is hereby affirmed. The appeal in this case was not timely. The decision of the representative remains in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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