

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE FERRY
Claimant

APPEAL 18A-UI-04763-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/11/18
Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 20, 2018, (reference 01), unemployment insurance decision that denied benefits based upon claimant's ability to and availability for work. After due notice was issued, a telephone conference hearing was scheduled to be held on May 14, 2018. Claimant participated. Department's Exhibits D-1 through D-3 were received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective March 11, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A reference 01 unemployment insurance decision denying claimant benefits based on her inability to work due to pregnancy was mailed to claimant on March 20, 2018. She received the decision shortly thereafter, within the appeal period. The decision warned that the decision became final unless an appeal was received by March 30, 2018. The decision also stated that to be eligible for benefits, claimant was required to submit proof that her physician has approved her to return to work. Instead of appealing the decision, claimant submitted a doctor's note to the agency approving her to work effective March 11, 2018, with no restrictions (Department Exhibit D-3). No initial decision was issued by the Benefits Bureau of Iowa Workforce Development in response to the note. On April 20, 2018, claimant appealed another decision denying her benefits and at that time, the reference 01 decision was also set up for an appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant'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).

However, because whether claimant is available for work is a weekly determination and claimant did submit a doctor's note (Exhibit D-3) to the agency as instructed on the decision denying her benefits, this matter will be remanded to the Benefits Bureau for an initial decision on whether claimant is able to and available for work, due to her pregnancy.

DECISION:

The March 20, 2018, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issue of whether claimant is able to and available for work due to her pregnancy based on her submission of Department Exhibit D-3, which is included in the appeal file, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Decision Dated and Mailed

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