

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L QUICK**  
Claimant

**APPEAL NO. 19A-UI-06405-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/10/19**  
**Claimant: Appellant (1)**

Iowa Code Section 95.4(3) – Able & Available  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Michele Quick filed an appeal from the August 2, 2019, reference 08, decision that denied benefits effective July 28, 2019, based on the deputy's conclusion that Ms. Quick failed to report as directed and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on September 5, 2019. Ms. Quick participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 19A-UI-06403-JTT, 19A-UI-06404-JTT, 19A-UI-06406-JTT, 19A-UI-06407-JTT, and 19A-UI-06408-JTT. Exhibit A and Department Exhibits D-1 through D-12 were received into evidence.

**ISSUE:**

Whether Ms. Quick's appeal from the August 2, 2019, reference 08, decision was timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 2, 2019, Iowa Workforce Development mailed the August 2, 2019, reference 08, decision to claimant Michele Quick at her last known address of record. The decision denied benefits effective July 28, 2019, based on the deputy's conclusion that Ms. Quick failed to report as directed and therefore did not meet the availability requirements. The decision stated that an appeal from the decision must be postmarked by August 12, 2019 or be received by the Appeal Section by that date. Ms. Quick received the decision in a timely manner, prior to the appeal deadline, but did not take any steps to appeal the decision by the appeal deadline. On August 14, 2019, Ms. Quick filed an online appeal that the Appeal Bureau interpreted as an appeal from all adverse decisions including the August 2, 2019, reference 08, decision.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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, subsections 10 and 11, 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.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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 evidence in the record establishes that the Ms. Quick's appeal from the August 2, 2019, reference 08, decision was untimely. The record shows that Ms. Quick had a reasonable opportunity to file an appeal by the August 12, 2019 appeal deadline, but delayed her appeal until August 14, 2019. Because the late filing of the appeal was attributable to Ms. Quick and not attributable to Iowa Workforce Development or to the United States Postal Service, there is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal is untimely, the administrative law judge lacks jurisdiction to disturb the August 2, 2019, reference 08, decision that denied benefits for the week that ended July 13, 2019. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the August 2, 2019, reference 08, decision is untimely. The decision that denied benefits effective July 28, 2019, based on the deputy's conclusion that the claimant failed to report as directed and therefore did not meet the availability requirements, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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