

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LULA A GRIMAY**  
Claimant

**APPEAL 19A-UI-07044-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 02/24/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On September 4, 2019, Lula A. Grimay (claimant) filed an appeal from the August 19, 2019, reference 02, unemployment insurance decision that denied benefits based upon the determination Wells Enterprises, Inc. (employer) discharged her for excessive, unexcused absences. The parties were properly notified about the hearing. A telephone hearing was held on September 27, 2019. The claimant participated personally. The employer participated through Associate Business Partners of Human Resources Chris Stahl and represented by Jackie Boudreax. Tigrinya interpretation was provided by Yodit (employee number 10039) from CTS Language Link. The department's Exhibits D1 and D2 were admitted into the record.

**ISSUE:**

Is the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on August 19, 2019. She received the decision within ten days on August 22. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 29; however, the claimant has a very limited ability to speak and read English.

After receiving the disqualification decision, the claimant misplaced the letter among other mail she had received and did not come across it again until sometime on or about September 3. On September 4, she went to her local IowaWORKS office. The staff explained to her what the decision said and assisted her in filing the appeal.

**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:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 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. 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.

Normally, if a person receives a decision and does not act on it because they cannot read it due to language barriers or does not have any assistance available, an appeal will be considered timely as there was no effective notice. However, in this case, the record shows the claimant did receive the document and knew where and how to obtain assistance. She did not act in a timely manner because she misplaced the letter among other mail she received not due to an inability to read or obtain information about the decision. The claimant has not established that her failure to file a timely appeal was due to a lack of notice, 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). As the claimant did not file a timely appeal, 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).

**DECISION:**

The August 19, 2019, reference 02, 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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