

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TERESA M AHEARN**  
Claimant

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**APPEAL 17R-UI-00312-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/18/16  
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.6(1) – Filing Claims

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated October 4, 2016, (reference 01) that denied benefits. A first hearing was scheduled between the parties on December 9, 2016. The claimant/appellant failed to appear at the hearing, and the appeal was dismissed. Upon a remand decision from the Employment Appeal Board, the appellant's request to reopen the hearing was granted. Notice of the second hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 8:00 a.m. on February 3, 2017. The claimant participated personally. The employer participated by way of Laura Roney, Payroll. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: When establishing her claim for unemployment benefits, the claimant listed her mother's address for mailing purposes. The claimant stated that she visits her mother often, about every other week, and that her mother checks the mail every few days. (The claimant has since updated her address to her home in Menona.) The claimant uses her mother's telephone and relies upon her for transportation, and it was her mother who encouraged her to file for unemployment benefits. The claimant is unsure when she visited her mother in October. The claimant's mother did not attend the hearing to confirm when the letter was received.

An unemployment insurance decision resulting in disqualification of benefits based on the claimant's separation with this employer was mailed to the claimant's last-known address of record (which was identified as her mother's address) on October 4, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by

October 14, 2016. The appeal was not filed until November 21, 2016, which is after the date noticed on the unemployment insurance decision (Department Exhibit D-1).

The claimant offered conflicting explanations about the delay in filing her appeal. First, the claimant stated she had only a few days to respond to the initial decision when she received it. Then she stated she received it after the final day to appeal passed, as it was bundled with her other mail sent to that address. The claimant also testified that she understood she was denied benefits but did not understand she could appeal. The claimant did not visit her local office for guidance in Decorah, until November 21, 2016, while in town for another reason. The claimant stated she also has dyslexia which can affect her reading comprehension. The claimant acknowledged she read the decision and knew it denied her benefits. The claimant did not request assistance from family or IWD in interpreting the initial decision.

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

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

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.

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 claimant chose to list an address where she did not reside and only infrequently checked the mail as her point of contact for unemployment insurance benefits. After establishing the claim for benefits, the claimant did not visit or check her mail at that address (her mom's home) for an extended period of time. By the time the claimant retrieved her mail at her mom's house, the initial decision was part of a larger stack of mail. The claimant read the decision and understood she was denied benefits. Based on the evidence presented, the claimant indicated when she did read the letter, did not request assistance in comprehending the letter or in filing an appeal. She then waited approximately five weeks before visiting her local IWD office for assistance.

The administrative law judge concludes that the claimant's failure 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).

#### **DECISION:**

The October 4, 2016, (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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs