

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODI A CHRIST
Claimant

APPEAL 17A-UCFE-00030-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/28/16
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Jodi A. Christ (claimant/appellant) filed an appeal from the September 19, 2016, reference 02, unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 30, 2017. The claimant participated. The employer did respond to the hearing notice and did not participate. Claimant's Exhibit A was received. Department's Exhibits D1 through D3 were received.

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 September 19, 2016. She received the decision within ten days, on or about September 21, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 29, 2016. The appeal was not filed until June 16, 2017.

At the same time the claimant was separating from employment, she was charged with disorderly conduct that was alleged to have occurred on her last day of work. The claimant did not appeal the decision as she felt if she was found guilty of the charge she did not deserve unemployment insurance benefits. No one from Iowa Workforce Development (IWD) told the claimant that she was unable to appeal or file for benefits due to the pending charges. The claimant's attorney told her that as she was not able to work she was not eligible to receive benefits. The claimant was released to work in December 2016. The physical impairments that prevented the claimant from working would not have prevented her from mailing a letter or going to her local IWD office to file an appeal. The claimant filed her appeal to the unemployment insurance decision, which denied benefits, two days after the disorderly conduct charges against her were dismissed.

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, 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 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 notice was valid and the appellant had a reasonable opportunity to file a timely appeal.

The 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 in delivering the notice. See Iowa Admin. Code r. 871-24.35(2). The claimant's decision not to file an appeal until the disorderly conduct charges were resolved was a personal decision and does not constitute reasonable grounds for the delay in filing her appeal. 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.

DECISION:

The September 19, 2016, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn