

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LAVELL CLARK**  
Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL 19A-UI-07075-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/07/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.16(4) – DM – Offenses – Misrepresentation  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Lavell Clark, Claimant, filed an appeal from the July 17, 2019 (reference 02) unemployment insurance decision that found he was not eligible for benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 2, 2019, at 9:05 a.m. Claimant participated. Iowa Workforce Development participated through Sean Clark, Investigator II. Department's Exhibits 1 - 4 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is ineligible for unemployment insurance benefits due to an unpaid fraud overpayment balance.  
Whether claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: An Unemployment Insurance Decision issued on July 17, 2019 determined claimant was not eligible to receive unemployment insurance benefits due to an unpaid fraud overpayment balance. The decision was mailed to claimant at 1817 B Avenue NE, Cedar Rapids, Iowa on July 17, 2019. That was claimant's correct address on that date. Claimant received the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 27, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. July 27, 2019 fell on a Saturday; therefore, claimant's appeal was due Monday, July 29, 2019. Claimant appealed the decision on September 3, 2019 by completing a form at his local Iowa Works office. Claimant's appeal was postmarked September 4, 2019 and received by the Appeals Bureau on September 5, 2019. Claimant's reason for submitting the appeal after the due date was that he did not read the portion of the decision that listed the appeal due date.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.

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

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.

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.

Claimant submitted his appeal over a month late. Claimant's delay was caused by him not reading the decision; the delay was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The July 17, 2019 (reference 02) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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