

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATOYA TYLER
Claimant

APPEAL 17A-UI-11223-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/15/17
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 20, 2017, monetary determination that found claimant ineligible for benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on November 20, 2017. Claimant participated.

ISSUES:

Did the claimant file a timely appeal from the monetary determination?
Is the monetary determination correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A monetary determination finding claimant ineligible for benefits was mailed to the claimant's last known address of record on October 20, 2017. Claimant received the decision on or about October 27, 2017, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau within ten days of the determination being mailed. The deadline passed on October 30, 2017. Claimant did not file her appeal until November 2, 2017.

Claimant asked an IWD representative if she could use an alternate base period, but did not receive a decision allowing or denying her request.

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:

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 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 administrative law judge concludes that failure to follow the clear written instructions 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).

However, no decision has been issued on claimant's request for use of alternate base period. This matter will be remanded to the Benefits Bureau for an initial determination on that issue.

DECISION:

The October 20, 2017, monetary determination is affirmed. The appeal in this case was not timely, and the monetary determination finding claimant ineligible for benefits remains in effect.

REMAND:

The issue of whether claimant is eligible for benefits using an alternate base period is remanded to the Unemployment Insurance Benefits Bureau for an initial determination.

Christine A. Louis
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Decision Dated and Mailed

cal/scn