

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**AMY M PAYNE**  
Claimant

**APPEAL NO. 11R-UI-09526-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/01/09**  
**Claimant: Appellant (1)**

Section 96.3-5-B – Eligibility for Training Extension Benefits  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Amy Payne filed an appeal from a representative's decision dated July 21, 2010, reference 06, that denied claimant's request for training extension benefits. A telephone hearing was held on May 3, 2011. The claimant did participate. On May 5, 2011 an administrative law judge decision was issued affirming the adjudicated determination finding that the claimant's appeal was not timely. The matter was appealed to the Employment Appeal Board and remanded for new hearing because the voice recording system was inoperable and did not transfer a voice file. After due notice was issued, a hearing was held by telephone on December 19, 2011. The claimant did participate.

**ISSUE:**

At issue in this matter is whether the appeal filed herein was timely.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: That a disqualification decision was mailed to the claimant's last-known address of record on July 21, 2010. The claimant did not receive the initial determination but therefore requested a copy of the determination be sent to her. Ms. Payne received a copy of the fact-finder's decision on or about November 3, 2010. Ms. Payne read the decision but did not file an appeal at that time because she had discontinued training. Later in February 2011 Ms. Payne resumed training. Ms. Payne filed an appeal because she had resumed training and desired to receive training extension benefits. The claimant had not filed an appeal within ten days of receiving the adverse decision on November 3, 2010. The claimant's appeal was filed February 7, 2011.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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 is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board 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 of Iowa has declared there is a mandatory duty to file appeals from representative's 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 Department of Job Service, 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 Department of Job Service, 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 administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Agency error or action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further

concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6-2 and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

The administrative law judge concludes that the claimant has not filed a timely appeal. The claimant received a copy of the initial determination on November 3, 2010 but did not take any steps at that time to file an appeal. Ms. Payne waited until February 7, 2011 to file her appeal when she had again resumed taking classes and at that time filed her appeal. The administrative law judge concludes that the appeal was not timely pursuant to Iowa Code section 96.6-2.

**DECISION:**

The decision of the representative dated July 21, 2010, reference 06, is hereby affirmed. The appeal in this case was not timely. The decision denying training extension benefits remains in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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