

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER K WARREN-COLLISON**  
Claimant

**IOWAWORKS**

**APPEAL 19A-UI-09815-AW-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/14/19  
Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.4(7) – Eligibility – Reemployment services  
Iowa Code § 96.6(2) – Filing – Timely appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the June 20, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 10, 2020, at 9:00 a.m. Claimant participated. Iowa Workforce Development participated through Jessica Merino, RESEA Career Planner. Department's Exhibits 1 – 5 were admitted.

**ISSUES:**

Whether claimant filed a timely appeal.  
Whether claimant is able to and available for work.  
Whether claimant failed to report as directed by a department representative.  
Whether claimant participated in the re-employment services class.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 224 Fawn Creek Circle, Anamosa, Iowa on June 20, 2019. Claimant was in the process of moving in June 2019 and does not recall whether that was her correct address on that date. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by June 30, 2019, which was a Sunday. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Therefore, the appeal period was extended to Monday, July 1, 2019. Claimant appealed the decision via mail on December 10, 2019, as evidenced by the postmark. Claimant's appeal was received by Iowa Workforce Development on December 12, 2019.

On May 22, 2019, IWD mailed a letter to claimant at 224 Fawn Creek Circle, Anamosa, Iowa directing claimant to report for a Re-employment and Eligibility Assessment appointment on June 10, 2019. (Exhibit 1) Claimant received the letter. The letter states that "failure to appear on the date and time listed below WILL result in the denial of unemployment insurance

benefits.” (Exhibit 1) It also states that, “if you are unable to keep this appointment, please contact the number located at the top of the page.” (Exhibit 1) Claimant did not attend the appointment because her financial situation had changed and she no longer needed the unemployment insurance benefits. Claimant did not contact IWD regarding missing the appointment. Claimant completed the assessment on December 10, 2019.

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

For the reasons that follow, the administrative law judge concludes the claimant’s appeal was timely.

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.

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 not have a reasonable opportunity to file a timely appeal.

The record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant’s appeal is timely.

The next issues to be determined are whether claimant was able to and available for work, whether claimant failed to report as directed by a department representative and whether claimant participated in the re-employment services class. For the reasons that follow, the administrative law judge concludes that claimant failed to report for the re-employment services class on June 10, 2019 but attended the class on December 10, 2019; therefore, claimant was not able to and available for work from June 10, 2019 through December 10, 2019.

Iowa Code sections 96.4(3) and (7) provide, in pertinent part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work.

7. The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

Iowa Administrative Code rule 871-24.6(6) provides:

A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified to return to work, or both prior to the scheduled appointment or service.

Claimant received the notice of her appointment with IWD but did not attend the appointment because her financial situation had changed and she no longer needed unemployment insurance benefits. This does not constitute justifiable cause for failure to attend and participate in the appointment. Claimant was not able to and available for work from June 10, 2019 to December 10, 2019.

**DECISION:**

Claimant's appeal was timely. The June 20, 2019 (reference 02) unemployment insurance decision is modified in favor of appellant. Benefits are denied from June 10, 2019 until December 10, 2019. Benefits are allowed after December 10, 2019, provided claimant is otherwise eligible.

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Decision Dated and Mailed

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