

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BEVERLY L PRIER**  
Claimant

**APPEAL NO: 12A-UI-04955-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTHWEST DIRECT OF IOWA INC**  
Employer

**OC: 01/29/12  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 20, 2012, reference 02, that held she was discharged for misconduct on January 27, 2012, and benefits are denied. A telephone hearing was held on May 21, 2012. The claimant participated. Steven Krumpe, Attorney, participated for the employer. Employer Exhibit One was received as evidence.

The employer filed a pre-hearing motion to dismiss claimant's appeal as untimely, and this was the sole issue considered in the hearing.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department fact-finding occurred on March 13, and the department mailed the decision to claimant's address of record on March 20, 2012. The claimant received the decision on March 22. The appeal deadline date is March 30. The claimant authored an appeal letter on March 26 and she believes she placed it in her mailbox for rural pick-up on the same date.

The claimant called the Appeals Bureau on or about April 30 to inquire about her appeal. When she learned it had not been received, she submitted an appeal by fax on April 30, 2012 that was received.

**REASONING AND CONCLUSIONS OF LAW:**

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 "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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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. 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

Whether claimant attempted an earlier appeal from April 30 is not established by evidence other than her testimony. The claimant offered no good cause for the month she delayed to inquire about her appeal knowing that the earlier department decision had been mailed one-week after hearing. While there is no precise period as to how long someone should wait to ask about the appeal status, one-month is an inordinate length of time.

**DECISION:**

The department decision dated March 20, 2011, reference 02, is affirmed. The claimant failed to file a timely appeal. The department decision regarding claimant's January 27, 2012 employment separation remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs