

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DEBORAH A FABER**  
Claimant

**APPEAL 18A-UI-00801-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 08/20/17  
Claimant: Appellant (1)**

---

Iowa Code § 96.4(3) – Available for work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the December 20, 2017, (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on February 13, 2018. The claimant, Deborah A. Faber, participated personally. Becky Goodier, Workforce Advisor participated on behalf of Iowa Workforce Development. Department Exhibits 1 through 8 were admitted into the record. Department Exhibit D- 1 was entered into the record.

**ISSUES:**

Did the claimant file a timely appeal?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of August 20, 2017. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant on December 1, 2017 which stated the claimant was to report for a reemployment and eligibility assessment appointment on December 19, 2017. The claimant did not receive the notice. When she noticed her benefits had stopped she called her local Sioux City office on December 29, 2017 and spoke to Norma. Norma explained to her that she had missed an appointment which was why her claim was locked. Norma told the claimant a decision had been issued locking her claim. Norma set up an appointment for the claimant with Ms. Goodier on January 4, 2018. The claimant attended the appointment with Ms. Goodier on January 4 and was given a copy of the decision denying her benefits. By that time, the ten days allotted to a claimant to file an appeal had passed. The claimant did not file an appeal until January 18, 2018 fourteen days after being given a copy of the decision by Ms. Goodier. The claimant has not provided any good reason why it took her fourteen days to appeal the decision denying benefits once she actually received the decision.

## REASONING AND CONCLUSIONS OF LAW:

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

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, subsections 10 and 11, 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.

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 claimant did not receive the decision when it was mailed to her. But, a copy was given to her on January 4, 2018. The claimant could have filed a timely appeal within ten working days of the date she actually received a copy of the decision. The claimant's argument that she had to gather information for the appeal is simply not credible in light of her reason provided for appeal was "I never received a mail notice to attend a meeting or never received a phone call." (Department's exhibit D-1). There was no information for the claimant to gather after she was given a copy of the actual decision on January 4, 2018. The claimant has not established any good reason for her delay in filing her appeal until January 18, 2018. The record in this case shows that more than ten calendar days elapsed between the date the decision was given to

the claimant and the date her 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The December 20, 2017, (reference 03), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/rvs