

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT E KINCAID**  
Claimant

**APPEAL NO. 11A-UI-08355-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUXLAND RECOVERY INC**  
Employer

**OC: 04/24/11  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated May 20, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for July 18, 2011.

Although the claimant responded to the hearing notice and provided a telephone number at which he was supposed to be available, the claimant did not answer his phone when his number was dialed at 1:00 p.m. A detailed message was left for the claimant that the record would be closed at 1:05 p.m. and that he needed to call immediately. The number and the name of the administrative law judge were left on the message. The administrative law judge waited until 1:05 p.m. and then called the employer. The administrative law judge explained that there was a preliminary issue in this case on whether the claimant filed a timely appeal and that only the claimant could provide testimony on that issue.

After the employer was dismissed, the claimant called the Appeals Section. His call was at 1:08 p.m. The claimant insisted that his phone did not ring and that the administrative law judge did not call him. He admitted that he got the message. The administrative law judge told the claimant that all dialing is recorded. She played the recording for the claimant and the recording showed that the correct number was dialed and that a message was left. The claimant believes that the failure of his phone to ring is the agency's fault, not his. He was using a cell phone, contrary to instructions on the hearing notice. The administrative law judge explained that it was the claimant's responsibility to provide a telephone number at which he could be reached. The record was not reopened.

**ISSUE:**

Whether the claimant filed a timely appeal.

## **FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

On May 20, 2011, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by May 30, 2011, or received by the Appeals Section on that date. The claimant's appeal was filed on June 23, 2011.

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

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 an appeal postmarked as timely.

The administrative law judge concludes that the appellant's failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

**DECISION:**

The claimant failed to file a timely appeal from the representative's decision dated May 20, 2011, reference 01. That decision, which concluded that the claimant was not eligible to receive unemployment insurance benefits, remains in full force and effect.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw