

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**JAMES BYARS**

Claimant

and

**IWD INVESTIGATION & RECOVERY**

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**HEARING NUMBER: 17BIWDUI-153R**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION: 96.6-2, 96.4-3**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** and **REMANDS** as set forth below.

**FINDINGS OF FACT:**

On March 25, 2016, a representative's decision was mailed to James Byars (Claimant). The decision was mailed to the Claimant's last known address as supplied to Iowa Workforce. The Claimant received the decision while at the Statesville Northern Reception Center in Joliet, Illinois, where he was located from March 17, 2016 through April 4, 2016. He wrote and deposited his appeal that was placed in an envelope bearing the Joliet address in the USPS Box on Tuesday, March 29, 2016. He was subsequently transferred from that facility to the Jacksonville facility. The Joliet facility would not have mailed his appeal if his mail did not have the current and correct address on it. His appeal was subsequently postmarked on April 21, 2016, 17 days beyond the April 4, 2016 deadline.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code 96.6 provides:

*2. Initial determination.* ... 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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or *to delay or other action of the United States postal service.*" (Emphasis added.)

In addition, 20 Illinois Administrative Code section 525.j130)(b) provides:

Offenders must clearly mark all outgoing mail with their name and in adult facilities with their institutional number. Mail that is not properly marked, including privileged mail, shall be opened and returned to the sender if the sender's identity can be determined. If the sender's identity cannot be determined, the mail shall be destroyed.

Here the evidence establishes by inference that the appeal was in fact filed on time (on or before April 4, 2016), but due to circumstances beyond the Claimant's control, there was a postal delay of 17 days. Under these circumstances, we find the Claimant's appeal timely.

#### **DECISION:**

The administrative law judge's decision dated December 23, 2016 is **REVERSED & REMANDED** to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

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Kim D. Schmett

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Ashley R. Koopmans

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