

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALI J KADHIM**  
Claimant

**APPEAL NO. 12A-UI-10763-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPHERION STAFFING LLC**  
Employer

**OC: 01/09/11**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 1, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 6, 2012. The claimant participated. Although the employer responded to the hearing notice, no one answered when the number was called by the administrative law judge. A detailed message was left on how to participate in the hearing. No one from the employer called during the hearing. The record consists of the testimony of Ali Kadhim. Official notice is taken of agency records.

**ISSUES:**

Whether the claimant filed a timely appeal; and

Whether the claimant was able and available for work from January 7, 2011, to February 9, 2011.

**FINDINGS OF FACT:**

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

On March 1, 2011, a representative issued a decision that held the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by March 11, 2012, or received by the Appeals Section on that date. The claimant's appeal was filed on September 5, 2012. The claimant did not receive a copy of the decision.

The claimant established a claim for unemployment insurance benefits with an original claim date of January 9, 2011. He was laid off from his job with Spherion Staffing. The claimant was out of the country from January 7, 2011, to February 9, 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).

Since the claimant did not receive a copy of the representative's decision, he did not have a reasonable opportunity to file a timely appeal. The claimant's appeal will be treated as timely.

871 IAC 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant is not eligible for unemployment insurance benefits from January 7, 2011, to February 9, 2011. He was out of the country and not available for work.

**DECISION:**

The representative's decision dated March 1, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits from January 7, 2011, to February 9, 2011.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw