

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**OLYMPIA GENUS**  
Claimant

**APPEAL 20A-UI-00549-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/22/19  
Claimant: Appellant (1)**

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Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On January 21, 2020, Olympia Genus (claimant) filed an appeal from the January 3, 2020, reference 02, unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. After due notice was issued, a telephone hearing was held on February 5, 2020 and consolidated with the hearing for appeal 20A-UI-00548-SC-T. The claimant participated personally. The Department's Exhibits D1 and D2 were admitted into the record.

**ISSUE:**

Is the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim for benefits effective December 16, 2018 following a separation from Chatham Oaks. The claimant's WBA was \$315.00. The claimant filed a subsequent claim for benefits effective December 22, 2019. The administrative record shows the only employer who has reported wages since Chatham Oaks is Jaxco, LLC who reported \$345.00 paid in the fourth quarter of 2019. The claimant contends she has a W-2 from Iowa City Shelter House for wages earned in the summer of 2019, but it was not submitted for the hearing.

The unemployment insurance decision, which found the claimant ineligible for benefits in the second claim year because she did not earn eight times her weekly benefit amount, was mailed to the claimant's last known address of record on January 3, 2020. There is no indication that the claimant did not receive the decision in a timely manner. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 13, 2020. The appeal was not filed until January 21, 2020, which is after the date noticed on the disqualification decision. The claimant did not have an explanation as to why the appeal was filed late.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document 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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules Iowa Admin. Code

r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the claimant did have a reasonable opportunity to file a timely appeal. The claimant's appeal was filed after the deadline and she has not established that the delay was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The January 3, 2020, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

If the claimant has earned insured wages in 2019 that have not been reported to Iowa Workforce Development, she needs to take proof of the wages, which would include the W-2, to her local office for processing.



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Stephanie R. Callahan  
Administrative Law Judge

February 14, 2020  
Decision Dated and Mailed