

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BYRON D CEASAR**  
Claimant

**APPEAL NO. 08A-UI-05417-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/13/08 R: 01  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.2(1)(g) – Filing Weekly Claims (Retroactive Benefits)

**STATEMENT OF THE CASE:**

Byron D. Ceasar (claimant) appealed a representative's May 29, 2008 decision (reference 05) that denied his request for retroactive unemployment insurance benefits for the period of April 13 through May 10, 2008. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on June 23, 2008. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on May 29, 2008. The claimant received the decision on or about May 30, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 8, 2008. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, June 9. The appeal was not filed until it was hand-delivered to the local Agency office on June 10, 2008 and faxed from there to the Appeals Section the same day, which is after the date noticed on the disqualification decision. The claimant had previously written up an appeal but had misplaced the appeal before it was mailed. When he could not find his original appeal in order to mail it, on June 10 he went to his local Agency office where he was assisted in getting an appeal completed and filed that day.

## REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. 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 prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

This does not mean that the claimant loses four weeks of unemployment insurance benefits; the four weeks of benefits for which the claimant sought to receive retroactive to April 10 remain available to him to use in the future should he remain off work for that length of time.

**DECISION:**

The representative's May 29, 2008 decision (reference 05) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Retroactive benefits are denied for the four-week period ending May 10.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw