

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BRYANNA N KOOGLER**  
Claimant

**APPEAL NO. 20A-UI-00417-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWAWORKS  
REEMPLOYMENT SERVICES**  
Employer

**OC: 10/13/19  
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Admin. Code Rules 871-24.2(1)(e) & 871-24.6 – Failure to Appear for RESEA

**STATEMENT OF THE CASE:**

Bryanna Koogler filed a late appeal from the November 19, 2019, reference 04, decision that denied benefits effective November 17, 2019, based on an Agency's representative's determination that Ms. Koogler had failed to report as directed for a reemployment and eligibility assessment on November 18, 2019 and did not meet the availability requirements. After due notice was issued, a hearing was held on February 3, 2020. Ms. Koogler participated. Jessica Merino appeared on behalf of IowaWORKS Reemployment Services. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 7 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

**ISSUE:**

Whether there is good cause to treat the late appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Bryanna Koogler established an original claim for unemployment insurance benefits that was effective October 13, 2019. On November 19, 2019, Iowa Workforce Development mailed the November 19, 2019, reference 04, decision to claimant Bryanna Koogler at her last-known address of record. The decision denied benefits effective November 17, 2019, based on an Agency representative's determination that Ms. Koogler had failed to report as directed for a reemployment and eligibility assessment on November 18, 2019 and therefore did not meet the availability requirements. The reference 04 decision stated that an appeal from the decision must be postmarked by November 29, 2019 or be received by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 29, 2019 was the Friday following Thanksgiving and Iowa Workforce Development offices were closed that day. The next working day was Monday, December 2, 2019. The November 19, 2019, reference 04, decision followed two notices that were mailed to Ms. Koogler at same address of record on November 7, 2019.

The two notices directed Ms. Koogler to appear for a Re-Employment Services and Eligibility Assessment on November 18, 2019 and to appear for an Essential Tools class on November 21, 2019. While Ms. Koogler asserts she did not receive any of the three mailings in question, the assertion is unreliable. It is more likely that the decision and other correspondence arrived at the address of record in a timely manner, but that Ms. Koogler did not open or review the correspondence when it arrived. From the time that Ms. Koogler established her claim for benefits in October 2019 until on or about January 1, 2020, Ms. Koogler resided with her parents in Tipton and provided that address as her address of record with Iowa Workforce. Ms. Koogler left it to her parents to collect and distribute her mail. After the first of the year, Ms. Koogler commenced residing at her parents' cabin in Delhi and updated her address of record to the cabin address. Ms. Koogler later updated her address of record to a post office box in Delhi. On January 14, 2020, Ms. Koogler filed an online appeal from the January 6, 2020, reference 06, decision that had allowed benefits effective December 29, 2019, provided Ms. Koogler was otherwise eligible, based on the Agency representative's determination that Ms. Koogler had participated in the reemployment and eligibility assessment during the week that began December 29, 2019. The Appeals Bureau treated the appeal as a late appeal from the November 19, 2019, reference 04, disqualification decision.

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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 weight of the evidence in the record establishes an untimely appeal. The administrative law judge found Ms. Koogler's assertion that she did not receive the November 19, 2019, reference 04, decision and did receive the two notices that preceded the decision highly implausible and unreliable. Ms. Koogler elected not to present testimony from her parents, to whom she deferred responsibility for initial handling of her incoming mail. The much more straightforward explanation and conclusion is that Ms. Koogler did not open or review the correspondence in question. Based on that conclusion, the administrative law judge further concludes that Ms. Koogler had a reasonable opportunity to file a timely appeal. Ms. Koogler did not file an appeal from the November 19, 2019, reference 04, decision until about a month and a half after the November 29, 2019 appeal deadline. The weight of the evidence indicates that the late filing of the appeal was attributable to Ms. Koogler and was not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the November 19, 2019, reference 03, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for a decision regarding the failure to appear for the November 18, 2019 re-employment and eligibility assessment without need for further hearing.

**DECISION:**

The November 19, 2019, reference 04, decision is affirmed. The claimant appeal from the decision was untimely. The decision that denied benefits effective November 17, 2019, based on an Agency's representative's determination that the claimant failed to report as directed for a reemployment and eligibility assessment on November 18, 2019 and therefore did not meet the availability requirements effective November 17, 2019, shall stand. The administrative law judge notes the November 19, 2019, reference 04, was modified by the January 6, 2020, reference 06, decision. The present decision has no effect on the January 6, 2020, reference 06, decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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