

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRENDA L VANNAUSDLE**  
Claimant

**APPEAL NO: 06A-UI-08150-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHNSON CONTROLS BATTERY  
GROUP INC**  
Employer

**OC: 02/19/06 R: 01  
Claimant: Appellant (1)**

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Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Brenda L. Vannausdle (claimant) appealed a representative's July 31, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Johnson Controls Battery Group, Inc. (employer). Hearing notices were mailed to the parties' last known addresses of record for a telephone hearing to be held at 2:00 p.m. on August 29, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Lanna McMann would participate as the employer's representative with one other witness. When the administrative law judge contacted Ms. McMann for the hearing, she agreed that the administrative law judge should make a determination based upon a review of the information in the administrative file. Based on a review of the information in the administrative file 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?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last known address of record on July 31, 2006. No evidence was provided to rebut the presumption that the claimant received the decision within a few days thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 10, 2006, a Thursday. The appeal was not filed until it was postmarked the afternoon of August 11, 2006, which is after the date noticed on the disqualification decision. No explanation as to the delay was provided. The administrative law judge notes that the claimant's current address of record is in Villisca, Iowa, and the appeal was also postmarked in Villisca; therefore, there would not be an issue of the appeal potentially being picked up by the postal service in the local community one day and postmarked in a regional hub the next day.

## REASONING AND CONCLUSIONS OF LAW:

The determinative issue in this case is whether the claimant timely appealed the representative's decision.

Iowa Code § 96.6-2 provides in pertinent part:

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.

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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(2) provides in pertinent part:

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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2) or other factors outside the appellant's control. The administrative law judge

further concludes that because the appeal was not timely filed pursuant to Iowa Code § 96.6-2, 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 v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

In the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits.

**DECISION:**

The July 31, 2006 (reference 01) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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