

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA A WEBB
Claimant

APPEAL NO: 18A-UI-08324-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/01/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)h(1), (2) – Backdating

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2018, (reference 01), unemployment insurance decision that denied the request to backdate the claim for benefits prior to July 1, 2018. After due notice was issued, a hearing was scheduled and held by telephone conference call on August 23, 2018. The claimant participated personally. The Claimant's Exhibit A was admitted into evidence. Department Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?
May the claim be backdated prior to July 1, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of July 1, 2018, and desires to backdate the claim to June 24, 2018. The claimant failed to establish a claim during the first week she was unemployed. The claimant requested to backdate her claim to June 24, 2018, which coincided with her temporary layoff from work. The claimant delayed establishing her claim for benefits until she knew whether the employer intended to pay her for the week she was laid off.

An initial unemployment insurance decision (Reference 01) resulting in denial of backdating was mailed to the claimant's last known address of record on July 11, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 21, 2018. Because July 21, 2018 was a Saturday, the final day to appeal was extended to July 23, 2018. The appeal was not filed until August 6, 2018, which is after the date noticed on the disqualification decision (Department Exhibit D-1). The claimant delayed filing her appeal

because she did not check her mail between July 1 through July 30, 2018, while she recovered from a July 5, 2018 foot surgery. The claimant remained home while she recovered and had assistance from her adult children, age 19 and 26. They did not check her mail for her. She opened the initial decision on July 30, 2018 and did not read the due date for appeal. She further delayed filing her appeal because she didn't know how to file it. The back page of the initial decision contains directions on how to file an appeal by mail, fax or online.

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:

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).

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 appellant did have a reasonable opportunity to file a timely appeal. The claimant's decision not to check her mail for approximately one month while residing at home was a personal decision. The claimant then further delayed filing the appeal by approximately one week and did not read the decision carefully which provided a due date to appeal and instructions on the reverse of the decision on how to appeal. The administrative law judge concludes that her 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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 July 11, 2018, (reference 01), unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn