

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC B RODRIGUEZ

Claimant

SWIFT PORK COMPANY

Employer

APPEAL 20A-UI-11973-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(10) – Eligibility – Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On September 25, 2020, Eric Rodriguez (claimant/appellant) filed an appeal from the September 11, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 3, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on December 1, 2020. The parties were properly notified of the hearing. Claimant participated personally. Employer did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the address on file on September 11, 2020. This was an address in Fairfield, IA where claimant was residing at the time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 21, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant was out of the state around that time and so did not become aware of the decision until he returned home and got his mail. He filed the appeal when he returned home on September 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The administrative law judge therefore lacks jurisdiction to change the decision that was appealed. That decision remains in full force and effect.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."


Claimant did not file a timely appeal because he was out of town and did not check his mail until he returned home. This reason is not due to error or misinformation of the department or USPS.

Furthermore, claimant had a reasonable opportunity to appeal in a timely manner. If he had regularly checked his mail or kept in touch with the department about the status of his claim, he would have been aware of the decision and been able to appeal timely. There is no indication that claimant took any such measures.

It is not unreasonable to expect a person who has applied for unemployment insurance benefits to be diligent in maintaining communication with the department and to alert the department or otherwise take steps to make sure important communications are received, particularly if the person is to be traveling or otherwise unavailable. Claimant did not take those steps here. The appeal is therefore untimely.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The administrative law judge therefore lacks jurisdiction to change the decision that was appealed. That decision remains in full force and effect.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 7, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.