

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MICHEL O LUAMBO
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 22A-UI-11960-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/31/20
Claimant: Appellant (6)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available to Work
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of Absence

STATEMENT OF THE CASE:

On May 9, 2022, Mr. Michel Luambo, claimant/appellant, appealed from the March 16, 2021, (reference 01) unemployment insurance decision that denied benefits as of 05/31/20 as claimant was not available for work as records indicate that claimant requested and granted a leave of absence. Notices of hearing were mailed to the parties last known addresses of record for a telephone hearing scheduled for June 24, 2022, at 9:00AM. Employer, Tyson Fresh Meats, Inc., participated through Lydia Awimgach, future demonstrator. Claimant personally participated along with French interpreter Lawrence, CTS #11640. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-11960-DH-T; 22A-UI-11961-DH-T; 22A-UI-11962-DH-T; and 22A-UI-11963-DH-T. Judicial notice was taken of the administrative record. Neither party had submitted any exhibits for admission at the time of the hearing.

ISSUES:

Is claimant's appeal timely?
Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated 05/09/22. To be timely, the appeal needed to be filed on or before 03/26/21, the first non-holiday weekday ten days after the mailing date. The decision was mailed to claimant's last known addresses on 03/16/21. Claimant did not receive this decision, nor any of the companion case decisions. Claimant testified he received a letter advising him of a total amount of overpayment he owed to IWD and that is the reason he appealed all the decisions. Claimant advised the letter that gave a notice of total amount he owed was received shortly after he returned from Africa. He returned from Africa 01/18/21. He offered no explanation as to the delay from 01/18/21, to 05/09/22. The overpayment decisions in the companion cases

were issued 01/10/22, almost a year after claimant asserts he was notified about a total overpayment.

Claimant was employed by the Tyson Fresh Meats, Inc., on the processing line as a pig cutter. He was full time with a set schedule. Claimant had a start date of August 28, 2007. He last worked on April 27, 2020, before being diagnosed with COVID-19 and being told to stay home starting April 28, 2020. He was separated from employment but did not learn of this until September 23, 2020.

Claimant did not ask for a leave of absence but was placed on one by the employer due to claimant having COVID-19. Claimant advised he was too sick to work and almost died, and this window of time for being too sick to work was from April 28, 2020, through September 22, 2020. Claimant was rehired by Tyson Fresh Meats, Inc., restarting on October 12, 2020, full time with a set schedule on the processing line as a pig cutter.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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).

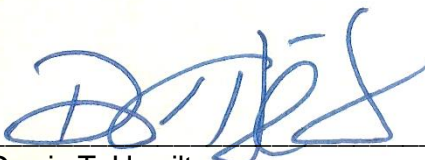
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative 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).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant asserts he learned of the disqualification from an IWD letter notifying claimant of the total amount of monies owed due to the overpayments and the letter was received shortly after claimant returned from Africa, which was 01/18/21. The problem is the overpayment decisions were not issued until 01/10/22. Claimant, at best, is mistaken regarding the contents of the letter received around 01/18/21. Whatever was in the 01/18/21 letter, claimant offered no explanation as to the delay from 01/18/21, to 05/09/22 (approximately 15½ months) for him to file the appeal. There was no good cause reason established for the delay. Claimant's appeal dated 05/09/22 is not filed on time. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The March 16, 2021, (reference 01) unemployment insurance decision that denied benefits as of 05/31/20, remains in effect as the appeal is untimely and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

October 18, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.