

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHAMEKIA JAMES**  
Claimant

**APPEAL 21A-UI-12352-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**OC: 02/14/21  
Claimant: Appellant (1R)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

The claimant, Shamekia James, filed an appeal from the April 20, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence from employment with the employer, Ozark Automotive Distributors, Inc. Hearing was originally scheduled for July 27, 2021. Claimant did not appear for the hearing and the appeal was dismissed on August 3, 2021. On August 9, 2021, claimant requested that the hearing record be reopened. The request was granted and a new hearing was scheduled. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2021. The claimant participated personally. The employer participated through HR Business Partner Julie Akers. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on April 20, 2021. Claimant speculated that she may have received the decision sometime in April. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 30, 2021. The appeal was not filed until May 14, 2021, which is after the date noticed on the disqualification decision.

Claimant has separated from this employer. The issue of separation with respect to this employer has not been the subject of a determination by Iowa Workforce Development as of this time.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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 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 Dept 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 Dept 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).

Claimant has not clearly alleged that she did not receive the decision in a timely fashion. Indeed, she speculated she may have received it prior to the deadline for appeal. There is little

evidence that the delay in filing the appeal was due to Department error or postal service delay. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

**DECISION:**

The April 20, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:**

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Alexis D. Rowe  
Administrative Law Judge

September 14, 2021  
Decision Dated and Mailed

ar/mh

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.