

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIRNA A ESPINOZA
Claimant

APPEAL 21A-UI-21141-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

**OC: 06/06/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On September 21, 2021, claimant Mirna A. Espinoza filed an appeal from the August 20, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was discharged from employment for disqualifying absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Tuesday, December 7, 2021. The claimant, Mirna A. Espinoza, participated. The employer, Seaboard Triumph Foods, L.L.C., participated through James Nelson, Human Resources Supervisor. Department's Exhibits D-1, D-2, and D-3 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

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 August 20, 2021. Claimant did not recall exactly when she received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 30, 2021. The appeal was not filed until September 21, 2021, which is after the date noticed on the disqualification decision.

Claimant does not regularly check her post office box where her mail from Iowa Workforce Development is sent. By the time she received the August 20, 2021, decision, the deadline to appeal had already passed. Claimant called the agency and had someone explain the decision to her in Spanish, as she does not read English. This person also notified claimant that she had the ability to appeal but could not do that over the telephone. Later, on September 21, claimant went to her local Iowa Workforce Development office and filed her appeal online.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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.

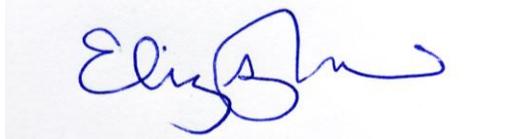
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. While some delay may have been reasonable in this case, as claimant could not initially read or understand the decision she received in the mail, the administrative law judge finds that the weeks-long gap of time between the deadline for appealing and the day claimant filed her appeal was too great to be deemed timely. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. 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 (authority) to decide the other issue in this matter.

DECISION:

The August 20, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 14, 2021
Decision Dated and Mailed

lj/lj