

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SEBIHA MASINOVIC**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21R-UI-15301-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On February 23, 2021, claimant Sebiha Masinovic filed an appeal from the July 23, 2020 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was not able to work due to illness. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Tuesday, August 31, 2021. Appeal numbers 21R-UI-15301-LJ-T and 21R-UI-15302-LJ-T were heard together and created one record. The claimant, Sebiha Masinovic, participated. Bosnian/English interpreter Mila (ID number 913) from CTS Language Link provided interpretation services for the hearing. The employer, Tyson Fresh Meats, Inc., did not register a witness or representative and did not participate. Claimant's Exhibit A was 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 July 23, 2020. Claimant is unsure if she received the decision at that time. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 2, 2020. The appeal was not filed until February 23, 2021, which is after the date noticed on the disqualification decision. Claimant explained that her son was living with her at the time the decision arrived at her home, and he is able to read and understand English, but she did not have time to have him review all of her mail. Instead, claimant decided to just respond to the mail that she understood and throw the rest of the mail away.

## 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:

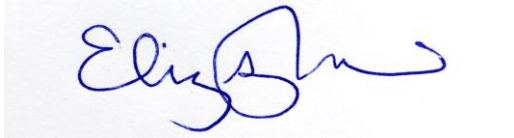
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission 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. 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 July 23, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Elizabeth A. Johnson  
Administrative Law Judge

September 7, 2021  
Decision Dated and Mailed

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