

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TORI L KING**  
Claimant

**CITY OF IOWA CITY**  
Employer

**APPEAL 22A-UI-04131-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant, Tori L. King, filed an appeal from the August 31, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on March 17, 2022. The following hearings were consolidated as one hearing: 22A-UI-04131-JC-T, 22A-UI-04132-JC-T, 22A-UI-04134-JC-T and 22A-UI-04135-JC-T. The claimant participated personally. The employer/respondent, City of Iowa City, participated through Brad Barker. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Claimant Exhibits A, B, and C were admitted.

Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?  
Was the claimant able to work and available for work effective March 29, 2020?  
Was the claimant totally, partially or temporarily unemployed effective March 29, 2020?  
Is the employer chargeable for benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of March 29, 2020. At the time, claimant was a full-time student teacher-intern in connection with her schooling at the University of Iowa. She also worked part-time (approximately 2.5 hours every two weeks) for this employer as a roller skating rink guard or at special events. She earned \$13.75 per hour at the time.

An initial decision (reference 02) was mailed to the claimant/appellant's address of record on August 31, 2020. The decision contained a warning that an appeal must be filed by September 10, 2020. Appellant did receive the decision with the appeal period. Appellant filed the appeal on February 5, 2022 with the online form (See Department Exhibit 1).

Claimant stated she believed she filed an appeal. She was unsure what method or date, and did not follow up with IWD. Claimant did not have any details available about an appeal being filed. IWD has no record of an appeal until February 5, 2022. Claimant did not further inquire about receiving the overpayment decision dated May 11, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant was unable to present sufficient evidence to support she had filed an appeal or attempted to file an appeal to this decision before February 5, 2020. At a minimum, when claimant received the May 2021 overpayment decision, it would have been reasonable to inquire why the overpayment existed if she had in fact appealed the matter, or why there was no hearing. Unfortunately, claimant did not and could not furnish evidence to support an appeal was in fact filed (but perhaps not received) before February 5, 2022.

The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The August 31, 2020 (reference 02) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits is affirmed. The claimant failed to file a timely appeal and it is dismissed.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 29, 2022

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Decision Dated and Mailed

jlb/kmj

**NOTE TO CLAIMANT:**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>