

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**THERESA JONES**  
Claimant

**APPEAL NO. 21R-UI-08575-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant filed a late appeal from the May 15, 2020, reference 01, decision that denied benefits for the period beginning March 15, 2020, based on the deputy's conclusion that the claimant was on a leave of absence that she requested and the employer approved, that she was voluntarily unemployed, and that she did not meet the availability requirements. After due notice was issued, a hearing was held on June 9, 2021. The claimant participated and presented additional testimony through Donna Jones. Jenn Dettman represented the employer. There were three matters set for a consolidated hearing: 21R-UI-08575-JTT, 21R-UI-08576-JTT, and 21R-UI-08577-JTT. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO, the reference 01, 03 and 04 decisions, and the deputy's notes regarding the May 14, 2020, reference 01 fact-finding interview.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 15, 2020, Iowa Workforce Development mailed the May 15, 2020, reference 01, decision to the claimant's last-known address of record. Prior to issuing the reference 01 decision, the deputy attempted to contact the claimant for a fact-finding interview scheduled for May 14, 2020. When the claimant did not answer, the deputy left a voicemail message regarding the purpose of the call and the claimant's right to appeal the decision that would be mailed to her forthwith. The claimant's address of record was the claimant's permanent address of record, the claimant's parents' residence in Rockford, Iowa. The claimant was a student at Iowa State University and also maintained a residence in Ames. The May 15, 2020, reference 01, decision denied benefits for the period beginning March 15, 2020, based on the deputy's conclusion that the claimant was on a leave of absence from the Target that she requested and that Target approved, that she was voluntarily unemployed, and that she did not meet the availability requirements. The reference 01 decision stated that the decision would become final unless an

appeal was postmarked by May 25, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the working day. May 25, 2020 was the Memorial Day holiday and Tuesday, May 26, 2020 was the next working day. The weight of the evidence in the record establishes that the United States Postal Service delivered the reference 01 decision to the claimant's address of record in a timely manner, prior to the deadline for appeal. The claimant's parents collected the claimant's mail and notified the claimant when she received mail. The claimant's mother received and opened the decision on behalf of the claimant. During the period in question, the claimant was traveling to and from Ames and was in regular contact with her mother. The claimant did not file an appeal from the reference 01 decision by the May 26, 2020 extended appeal deadline or at any point prior to November 5, 2020.

On October 27, 2020, Iowa Workforce Development mailed the October 27, 2020, reference 03, decision to the claimant at the same address of record. The reference 03 decision held the claimant was overpaid \$968.00 in regular benefits for eight weeks between March 15, 2020 and May 9, 2020, based on the earlier decision that denied benefits. The reference 03 decision had a November 6, 2020 deadline for appeal.

On November 5, 2020, the claimant completed and transmitted an online appeal from the reference 03 overpayment decision. The Appeals Bureau received the decision on November 5, 2020 and treated it as also a late appeal from the May 15, 2020, reference 01, decision that denied benefits for the period beginning March 15, 2020. The claimant made no reference in her appeal to not receiving the earlier decision. Instead, the claimant focused on a different employment relationship with Hickory Park, which was not the basis for the reference 01 decision.

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of

any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The weight of the evidence in the record establishes an untimely appeal from the May 15, 2020, reference 01, decision that denied benefits for the period beginning March 15, 2020. The weight of the evidence establishes that the United States Postal Service delivered the decision to the claimant's address of record in a timely manner, that the claimant was aware of the decision through communication with her mother, that the claimant had a reasonable opportunity to file an appeal by the May 26, 2020 extended appeal deadline, but that the claimant discounted the importance of the decision since it pertained to Target rather than Hickory Park, and therefore did not file an appeal by the appeal deadline. The claimant unreasonably delayed filing the appeal until November 5, 2020. The late filing of the appeal was attributable to the claimant and was not attributable to Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the May 15, 2020, reference 01, decision that denied benefits for the period that began March 15, 2020. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the May 15, 2020, reference 01, decision was untimely. The decision that denied benefits for the period beginning March 15, 2020, based on the deputy's conclusion that the claimant was on a leave of absence from Target that she requested and the employer approved, that she was voluntarily unemployed, and that she did not meet the availability requirements, remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for a decision on the merits without need for further hearing.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

September 22, 2021  
Decision Dated and Mailed

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