

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CESAR Y ALMENDAREZ**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 22A-UI-07789-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Cesar Y. Almendarez, filed an appeal from the March 17, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on May 12, 2022. The hearing was held together with Appeals 22A-UI-07792-JC-T and 22A-UI-07794-JC-T. The claimant participated personally. Briana Reyes testified for the claimant. The employer/respondent, West Liberty Foods LLC., participated through Mira Zamudio, HR manager. Official notice of the administrative record was taken. Department Exhibit 1 was 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 eligible for benefits effective January 17, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits effective April 19, 2020. His weekly benefit amount was \$545.00.

Claimant works for a full-time start-operator. His rate of pay is \$15.84 per hour. Claimant reopened an unemployment insurance claim effective January 17, 2021 while taking a leave of absence. Claimant was absent from work between January 12, 2021 and January 28, 2021 and on an approved leave of absence. Employer agreed to allow claimant to be off of work and had work available to claimant, had he not been on a leave of absence.

Claimant was initially absent because he had side effects from a COVID-19 vaccine. Then claimant's family members, including his children, began testing positive for COVID-19, which required claimant to self-quarantine with them. Claimant did not personally test positive for COVID. He returned to work on January 29, 2021, and worked 7.55 hours on January 29th.

Claimant was paid half wages for the week of January 17, 2021 through January 23, 2021. Twenty hours at his hourly rate of pay was \$316.80.

Claimant was not paid for the second week of leave of absence but did earn \$119.60 for his 7.55 hours worked on January 29, 2021.

An initial decision (reference 02) was mailed to the claimant/appellant's address of record on March 17, 2021. The decision contained a warning that an appeal must be filed by March 27, 2022. The decision also directed the appellant to call the customer service line for assistance. Appellant did not receive the decision within the appeal period. Appellant filed the appeal on March 31, 2022 (See Department Exhibit 1). Claimant's first notice of the initial decision was through a March 14, 2022 initial decision which stated he was overpaid unemployment insurance benefits. Claimant's appeal, upon notification of the disqualification, was not delayed due to agency or postal service error. Claimant's appeal to the March 14, 2022 initial decision was not timely. See Appeal 22A-UI-07792-JC-T.

### **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).

Claimant did not initially have an opportunity to appeal the initial decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant would have learned of the disqualifying decision through the overpayment decision dated March 14, 2022. Claimant did not timely appeal the March 14, 2022 decision. The appeal was not filed until March 31, 2022. The administrative law judge is sympathetic to the claimant. However, based on the evidence presented, this is not a reasonable period of delay under the circumstances. Iowa Admin. Code r. 871-24.35(2)(c).

Further, the evidence presented does not support that claimant's delay in appealing *was 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). The appeal is dismissed because it was not timely filed.

#### **DECISION:**

The March 17, 2021 (reference 02) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits is affirmed. The appeal was not timely filed and is dismissed.



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Jennifer L. Beckman  
Administrative Law Judge  
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May 24, 2022  
Decision Dated and Mailed

jlb/scn