

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MERCEDES S BEENE**

Claimant

**APPEAL 22A-UI-02639-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLAGGER PROS USA LLC**

Employer

**OC: 10/10/21**

**Claimant: Appellant (6)**

Iowa Code § 96.6(2) - Timely Appeal  
Iowa Admin. Code r. 871-24.23(26) - Part-Time Same Hours, Wages  
Iowa Code § 96.4(3) - Able and Available to Work  
Iowa Code § 96.1A(37) - Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) - Same Base Period Employment

**STATEMENT OF THE CASE:**

January 6, 2022, claimant/appellant, Mercedes Beene, appealed the December 3, 2021, (reference 04) unemployment insurance decision that denied claimant benefits as of 10/17/2021, as records indicate claimant was still employed in their job for the same hours and same wages. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 22, 2022. Claimant participated. Employer, Flagger Pros USA, LLC, participated through Max Ncgonigoe. Judicial notice was taken of the administrative file.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant is employed with employer.

To be timely, claimant's appeal needed to be filed by December 13, 2021. The appeal was filed on January 6, 2022. Claimant admits to timely receiving the decision, on December 13, 2021. Claimant advises she misread the decision and thought she had thirty days to appeal, and that is why she waited until January 6, 2022, to submit her appeal.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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 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. 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). 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.*

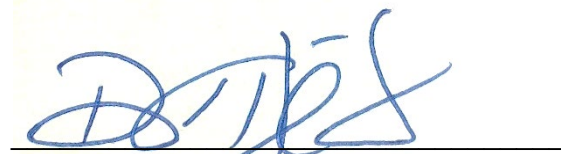
*IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Claimant received the appeal on the deadline to file, but instead of filing her appeal, misread the decision, and thought she had thirty days and not ten days to submit her appeal. Her appeal was filed on January 6, 2022 (which would be beyond the thirty days she mistakenly believed she had) and is late.

**DECISION:**

The December 3, 2021, (reference 04) unemployment insurance decision that denied claimant benefits as of 10/17/2021 remains in effect, as the appeal is not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton  
Administrative Law Judge

March 11, 2022  
Decision Dated and Mailed

dh/scn