

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MARILYN D BERGESON**  
Claimant

**APPEAL 22A-UI-11426-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLLAR TREE STORES INC**  
Employer

**OC: 06/13/21  
Claimant: Appellant (6)**

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

**STATEMENT OF THE CASE:**

May 2, 2022, Marilyn Bergeson, claimant/appellant, appealed the August 19, 2021, (reference 01) unemployment insurance decision that denied claimant benefits as of 06/13/21 as claimant was still employed at the same hours and wages as original contract of hire. Notices of hearing were mailed to claimant's last known addresses of record for a telephone hearing to be held on June 17, 2022, at 2:00 PM. Claimant personally participated. Employer, Dollar Tree Stores, Inc., did not participate. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-11426-DH-T; and 22A-UI-11427-DH-T. Judicial notice was taken of the administrative record, WAGES, and DBIN.

**ISSUES:**

Is the appeal timely?  
Is claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the claimant totally, partially, or temporarily unemployed?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

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

Claimant's appeal is dated May 2, 2022. To be timely, the appeal needed to be filed on or before August 30, 2021, the first nonholiday weekday ten days after the mailing date. The decision was mailed to claimant's last known addresses on August 19, 2021, which is the same address she used at the time of the hearing. Claimant never received this decision. Claimant did receive the overpayment decision, addressed in companion case 22A-UI-11427-DH-T. 22A-UI-11427-DH-T found claimant's appeal not timely filed.

Claimant was employed with Dollar Tree Stores, Inc. on a part-time basis. Claimant could not recall much information about her Dollar Tree employment. WAGES show the first three quarters of 2021 that claimant was still with Dollar Tree at roughly the same wages. Claimant believed she was filing for unemployment benefits against Taher, Inc. where claimant worked for a company that provides food services for school districts and claimant works at a school site. Claimant advised one does not select whom the unemployment is filed against.

### **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 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 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 appellant did not receive the decision, only learning of the decision when they received the overpayment decision, which is a companion case in 22A-UI-11427-DH-T and was found that the appeal was untimely filed. Because the overpayment decision was untimely filed, that makes this matter untimely filed as well. Claimant failed to meet her burden of proof to establish her appeal was timely. An untimely appeal means the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

The August 19, 2021, (reference 01) unemployment insurance decision that denied claimant benefits as of 06/13/21 as claimant was still employed at the same hours and wages as original contract of hire remains in effect as the appeal is not timely and the appeal is **DISMISSED**.



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Darrin T. Hamilton  
Administrative Law Judge

October 11, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.