

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MERSIDA MUSIC**  
Claimant

**DEE ZEE INC**  
Employer

**APPEAL 22A-UI-01896-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19  
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(3)A – Work Refusal  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On December 22, 2021, claimant Mersida Music filed an appeal from the June 17, 2021 (reference 04) unemployment insurance decision that denied benefits based on a determination that the claimant refused recall to work on May 14, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, February 14, 2022. Appeal numbers 22A-UI-01896-LJ-T, 22A-UI-01897-LJ-T, 22A-UI-01898-LJ-T, 22A-UI-01899-LJ-T, and 22A-UI-01900-LJ-T were heard together and created one record. The claimant, Mersida Music, participated. Bosnian/English interpreter Ivanka from CTS Language Link provided interpretation services for the hearing. The employer, Dee Zee, Inc., participated through Sarah Tew, HR Specialist. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the claimant file a timely appeal?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

***Failure to Return Upon Recall to Work***

Claimant began working for Dee Zee on September 25, 2017. Most recently, claimant was employed with the company as a full-time team leader. She was laid off on March 20, 2020, due to a lack of work brought on by the COVID-19 pandemic.

The employer began calling back employees to work in May 2020. On May 25, the employer first made contact with the claimant to inform her that her line was up and running and work was available for her as a team leader. Claimant reported that she could not return to work at that time due to daycare issues. The employer contacted claimant four more times to offer her the opportunity to return to work: June 1; June 8; June 15; and June 29. Each time, claimant declined to come back to work because she did not have childcare.

On June 29, Tew personally spoke with claimant, and claimant told her that she could not come back to work until her children were back in school. Tew informed claimant that Dee Zee would terminate her if she did not return to work, and claimant reiterated that she could not come back due to a lack of childcare. Tew then told claimant she could reapply with the employer later, but the employer could not guarantee that claimant could be hired again for her team leader position.

### ***Timeliness***

The initial unemployment insurance decision denying benefits was mailed to the claimant's address of record on June 17, 2021. The claimant did not receive the decision. Next, Iowa Workforce Development ("IWD") sent claimant three overpayment decisions dated September 28, 2021, and one overpayment decision dated September 29, 2021. Claimant received these decisions in late September or early October. However, she was "totally lost" as she does not read English, and she could not understand the decisions. Also around this time, her husband was in a car accident and barely survived, and the claimant was in a state of "total chaos." Later, claimant took the decisions to her sister-in-law to read. Next, claimant started calling IWD to get assistance with the decisions. Eventually, in December, she spoke with a man who explained the decisions to her. Claimant filed an online appeal after speaking with this IWD employee.

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

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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.

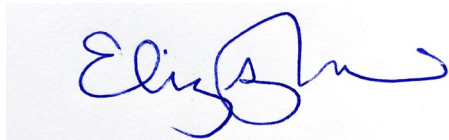
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Here, the claimant did not receive the initial decision. Therefore, she had no opportunity to file an appeal by the deadline of June 27, 2021. However, she then received four overpayment decisions issued on September 28 and 29, 2021. Claimant agrees she received these decisions in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. The administrative law judge understands that claimant could not read the decisions initially, due to the language barrier. However, claimant also had chaotic life events happening that contributed to her delay in filing an appeal, and she did not describe any diligent efforts to get assistance in understanding the decisions she received.

Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

The June 17, 2021 (reference 04) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

March 3, 2022  
Decision Dated and Mailed

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