

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GWEN PAGE**  
Claimant

**GETTERDONE INC**  
Employer

**APPEAL 21A-UI-12531-AD-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

On May 18, 2021, Getterdone Inc. (employer/appellant) filed an appeal from an Iowa Workforce Development decision dated May 7, 2021 (reference 01) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on March 4, 2021 without a showing of misconduct.

A telephone hearing was held on August 27, 2021. The parties were properly notified of the hearing. Gwen Page (claimant/respondent) participated personally and was represented by Attorney Theodore Craig. Getterdone Inc. (employer/respondent) participated by Dan Massoth and was represented by Attorney Laura Martino. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?

**FINDINGS OF FACT:**

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

The Unemployment Insurance Decision was mailed to employer at the address at 2331 University Avenue, Ste. 201, Des Moines, IA 50311 on May 7, 2021. That was employer's correct address at that time. Employer notified its representative of the decision on or about May 10, 2021.

The decision states that it becomes final unless an appeal is postmarked or received by the Iowa Workforce Development Appeals Section by May 17, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. May 17, 2021 was not a weekend or legal holiday. Employer appealed the decision on May 18, 2021. The delay in appealing was due to employer's representative believing the ten-day deadline to appeal did not begin running until the decision was received on May 10, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal was untimely. The decision dated May 7, 2021 (reference 01) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on March 4, 2021 without a showing of misconduct is therefore final and remains in force.

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)(a) 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 on 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)
  - (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.

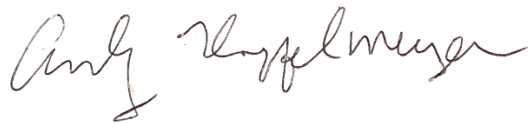
There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any appeal 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 administrative law judge finds employer received the decision in a timely manner and the delay in appealing was not due to Department error or misinformation or delay of the USPS. The delay was due to a misunderstanding as to when the deadline to appeal was while the administrative law judge understands this was an unintentional oversight, the decision clearly identified the deadline to appeal as May 17, 2021.

An unintentional oversight is not a good cause reason for delay, and the administrative law judge must therefore conclude the appeal is not timely. Because the appeal is not timely, the appealed decision has become final and the administrative law judge lacks jurisdiction to change it.

**DECISION:**

The administrative law judge concludes the employer's appeal was untimely. The decision dated May 7, 2021 (reference 01) that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on March 4, 2021 without a showing of misconduct is therefore final and remains in force.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 1, 2021  
Decision Dated and Mailed

abd/scn