

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATTI J SULLEY**  
Claimant

**FAMILY DOLLAR STORES OF IOWA LLC**  
Employer

**APPEAL 19A-UI-08583-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 09/15/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Patti Sulley, claimant, filed an appeal from the October 18, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 25, 2019 at 2:00 p.m. Claimant participated. Employer participated through Travis Essary, Regional Human Resources manager. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 319 North 2nd Street, Missouri Valley, Iowa on October 18, 2019. That was claimant's correct address on that date. Claimant typically receives mail from Des Moines, Iowa in Missouri Valley, Iowa in three days. Claimant has no reason to believe that she did not receive the decision within three days. Claimant believes she received the decision on October 22, 2019.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 28, 2019. Claimant appealed the decision online on October 31, 2019. Claimant's appeal was received by Iowa Workforce Development on October 31, 2019. Claimant provided no reason for the delay except that she believed the appeal was not due until November 1, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

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)(c) 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:

(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 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.

Claimant received the decision prior to the deadline but did not submit her appeal until three days after the deadline. The appeal instructions on the unemployment insurance decision are clear. Claimant's delay was caused by her confusion and not due to agency error or misinformation or delay by the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The October 18, 2019 (reference 01) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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