

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SARAH B CLARK**  
Claimant

**ABCM CORPORATION**  
Employer

**APPEAL 21A-UI-22185-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21**  
**Claimant: Appellant (1)**

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Iowa Code §96.6(2) – Timely Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Sarah B Clark, the claimant/appellant, filed an appeal from the June 16, 2021, (reference 02) unemployment insurance (UI) decision that denied REGULAR UI benefits as of March 28, 2021 because she was still employed in her job. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2021. Ms. Clark participated and testified. The employer participated through Alison Barker. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Clark's appeal filed on time?  
Is Ms. Clark able to and available for work?  
Is Ms. Clark on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Clark at the correct address on June 16, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by June 26, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. June 26, 2021 was a Saturday; therefore, the deadline was extended to Monday, June 28, 2021.

Ms. Clark did not recall whether she had received the decision. Ms. Clark's mailing address has not changed since the effective date of her claim. Ms. Clark did not appeal the reference 02 decision by the appeal deadline. IWD issued two additional decisions finding Ms. Clark was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Clark received at least one of those decisions. Ms. Clark filed an appeal online on October 7, 2021. The appeal was received by Iowa Workforce Development on October 7, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Clark's appeal of the reference 02 decision was not filed on time.

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).

Ms. Clark's delay in filing her appeal 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 in filing her appeal before the deadline. Ms. Clark's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

**DECISION:**

Ms. Clark's appeal of the reference 02 decision was not filed on time. The June 16, 2021 (reference 02) decision is affirmed.



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Daniel Zeno  
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Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
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January 5<sup>th</sup>, 2022  
Decision Dated and Mailed

dz/rs