

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERISONNE CILUS

Claimant

TYSON FRESH MEATS INC

Employer

APPEAL 21A-UI-13485-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant, Merisonne Cilus, filed an appeal from the January 29, 2021, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 4, 2021. Claimant participated personally. Employer participated through Lori Direnzo. Department’s Exhibit D-1 was received. CTS Language Link provided language services for claimant.

ISSUE:

Is the claimant’s appeal is timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant’s last known address of record on January 29, 2021. Claimant does not remember receiving the decision, but acknowledged that he typically gets mail at his address of record from Des Moines within three-to-five business days. He further stated that he gets mail, but much of it is in English, which he does not read or speak. He often does not know what the mail says. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 8, 2021. The appeal was not filed until June 9, 2021, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s appeal is 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) 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Claimant has not demonstrated that the delay in appealing was due to an error or misinformation by the Department or delay by the United States Postal Service. He acknowledged that he typically receives mail timely at his address of record and often does not understand it. While the administrative law judge is sympathetic to the language barrier issue, the delay of more than four months with respect to his appeal is not reasonable, and renders his appeal untimely.

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 to decide the other issue in this matter.

DECISION:

The January 29, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

August 10, 2021
Decision Dated and Mailed

ar/mh