

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEIKE B WERKMEISTER**  
Claimant

**NISSEN INC**  
Employer

**APPEAL 22A-UI-03504-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

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

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the December 30, 2021 (reference 05) unemployment insurance decision that denied benefits finding claimant voluntarily quit her employment with Nissen on June 7, 2021 for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on March 21, 2022. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.  
Whether claimant's separation was a voluntary quit without good cause attributable to employer.  
Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

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

The Unemployment Insurance Decision was mailed to claimant at the correct address on December 30, 2021. Claimant received the decision but does not recall the date of receipt. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 9, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. January 9, 2022 was a Sunday. Therefore, the deadline was extended to Monday, January 10, 2022. Claimant appealed the decision online on January 21, 2022. Iowa Workforce Development (IWD) received the appeal on January 21, 2022. Claimant gave no reason for the delay in submitting the appeal.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

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). 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).

Claimant received the decision but did not appeal the decision until after the deadline. Claimant has not established that her delay was due to agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The December 30, 2021 (reference 05) unemployment insurance decision is affirmed.



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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

March 25, 2022  
Decision Dated and Mailed

acw/ACW