

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LATEECE P WILLETT**  
Claimant

**DAVENPORT IA HOMECARE LLC**  
Employer

**APPEAL 20A-UI-09676-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On August 14, 2020, Lateece P. Willett (claimant) filed an appeal from the July 23, 2020, reference 03, unemployment insurance decision that denied benefits effective May 3, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on September 28, 2020. The claimant participated personally. The employer participated through Betsey Morthland, Executive Director. The department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

**ISSUE:**

Is the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her claim for benefits effective May 3, 2020 and her weekly benefit amount is \$181.00. The claimant has three part-time jobs and attends school full-time. The claimant is off work with one employer due to illness. She is attending monthly meetings with her other employer. This employer reports that the claimant earns \$12.00 an hour and worked 3 hours during the week ending May 16; 18 hours during the week ending May 23; 3 hours during the week ending May 30; 3 hours the week ending July 4; and, 3 hours the week ending July 11. The claimant did not report any wages earned during those weeks. Whether the claimant failed to report wages earned has not yet been investigated or adjudicated by the Integrity Bureau.

On or about July 12, the claimant was separated from employment. Whether the claimant's separation qualifies her for unemployment insurance benefits has not yet been investigated or adjudicated by the Appeals Bureau.

On July 23, Iowa Workforce Development (agency) mailed a disqualification decision to the claimant's last known address of record. She received the decision within ten days on July 29.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 2, which fell on a Sunday, so the date was extended to August 3. The appeal was not filed until August 14, which is after the date noticed on the disqualification decision, because the claimant went into her local office and delivered her doctor's notes. She mistakenly believed that would be better than filing an appeal as instructed on the decision she received.

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge does not find the claimant's testimony regarding the timeliness of the appeal to be credible. The claimant could not provide details about the individuals with whom she spoke. Additionally, it is not believable that the supervisor of the Appeals Bureau told her submitting just doctor's notes would be an acceptable way to file an appeal or that timeliness of the appeal would just be waived, as Iowa law does not permit waiver of the timeliness issue.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant filed the appeal after the deadline, and she has not credibly established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The July 23, 2020, reference 03, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**REMANDS:**

Whether the claimant failed to report wages earned with this employer or her other employers is remanded to the Integrity Bureau for investigation.

Whether the claimant's separation from the employer on or about July 12 qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau for review and processing.



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Stephanie R. Callahan  
Administrative Law Judge

September 30, 2020  
Decision Dated and Mailed

src/mh

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.