

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALEX MARTINEZ**

Claimant

**APPEAL 21A-UI-12168-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 02/21/21**

**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On May 5, 2021, claimant, Alex Martinez, filed an appeal from the March 25, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Swift Pork Company, discharged claimant for excessive, unexcused absenteeism. The parties were properly notified about the hearing held by telephone on July 21, 2021. The claimant participated personally. The employer participated through Patty Taylor. Department's Exhibit D-1 was admitted to the record.

**ISSUE:**

Is the claimant's appeal 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 March 25, 2021. It imposed a deadline for appeal of April 4, 2021, which was extended to April 5, 2021, due to the deadline falling on a weekend. However, at this time, claimant was in treatment for alcohol addiction out of state. He was in treatment from March 15, 2021, and returned to his home April 19, 2021. He explained that, upon his return home, it took some time for him to sort through mail and other obligations that came in during his period of treatment. He likely received the disqualifying decision around April 19, 2021, or shortly thereafter, when he returned home. However, he considered whether to appeal over the next two weeks, and decided to submit an appeal on May 5, 2021.

**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 had a valid reason for missing the initial appeal deadline based on his absence due to treatment. However, upon his return home from treatment, he waited more than two weeks to submit an appeal of the disqualifying decision. He acknowledged this was because he was deciding whether to submit an appeal during this time. The delay between his receipt of the decision and the submission of the appeal was unreasonable, and renders the appeal untimely filed. No other good cause reason has been established for the day between receipt of the decision and submission of the appeal. 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 March 25, 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.



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Alexis D. Rowe  
Administrative Law Judge

July 28, 2021  
Decision Dated and Mailed

ar/mh