

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHANE L HILDEBRAND**  
Claimant

**O'REILLY AUTOMOTIVE INC**  
Employer

**APPEAL 20A-UI-00342-AW-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/15/19  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)A – Discharge for Misconduct  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the December 30, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 30, 2020, at 9:00 a.m. Claimant participated. Employer participated through District Manager Pat Reilly and Store Manager Sean Jarnagin. Employer's Exhibit 1 was admitted.

**ISSUE:**

Whether claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 818 Simon Avenue, Carroll, Iowa on December 30, 2019. That was claimant's correct address on that date. Claimant does not know when he received the decision. Mail from Des Moines, Iowa is typically received in Carroll, Iowa in three days. Claimant knows of no reason other than the New Year's holiday that would have delayed his receipt of the decision in the mail.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 9, 2020. Claimant appealed the decision online on January 11, 2020. Claimant's appeal was received by Iowa Workforce Development on that date. Claimant waited to review the decision with his sister prior to filing his appeal. Claimant did not review the decision with an Iowa Workforce Development employee at his local office because he lacked transportation to the office. Claimant also attributes his delay in appealing to his father's hospitalization.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was 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)(c) 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:
  - (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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Claimant received the decision prior to the due date, but did not submit his appeal until after the due date. Claimant provided several reasons for his delay in submitting his appeal. However, none of the reasons were agency error or misinformation or delay of the United States Postal Service. Claimant could have called Iowa Workforce Development with questions about the decision or for assistance in understanding the decision, but did not. Claimant's appeal was not timely; therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The December 30, 2019 (reference 01) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
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Decision Dated and Mailed

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