

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NORBERTO VELEZ**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 18A-UI-10126-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/02/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Admin Code r. 871-24.35 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Norberto Velez, Claimant, filed an appeal from the September 21, 2018, (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with West Liberty Foods, LLC due to personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on November 5, 2018 at 1:00 p.m. Claimant participated; Spanish interpretation was provided by Cesar (employee number 11788) from CTS Language Link. Employer participated through Nikki Bruno, Human Resources Supervisor. No exhibits were admitted.

**ISSUE:**

Whether Claimant's appeal was timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on September 21, 2018. Claimant receives mail from Des Moines, Iowa in five to six days; claimant has no reason to believe that was not the case for the decision. (Claimant Testimony) The decision states that it becomes final unless an appeal is postmarked by 10/01/18, or received by Iowa Workforce Development appeal section by October 1, 2018. Claimant appealed the decision online on October 7, 2018. Claimant's appeal was received by the appeal section on October 7, 2018.

**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:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. (emphasis added)

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:
  - (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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date the 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. 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's delay was caused by his lack of internet access. (Claimant Testimony) The decision clearly states that the appeal deadline is October 1, 2018 and includes information about how the appeal can be submitted via facsimile, internet or mail. Claimant did not submit his appeal via mail, because he believed submitting it via internet would be faster. (Claimant Testimony) The administrative law judge concludes that failure to file a timely appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge further concludes that the appeal was not timely and, 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 September 21, 2018, (reference 01) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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