

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAW S SAI
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A- UI-16598-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC:05/10/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant, Saw S. Sai, appealed an unemployment insurance decision dated September 16, 2020 (reference 01) that denied benefits and concluded claimant was not able and available for work.

After proper notice, a telephone hearing was held on September 3, 2021. The hearing was held together with Appeals 21A-DUA-01744-JC-T, 21AUI-16600-JC-T, 21A-UI-16599-JC-T, and 21A-UI-16601-JC-T. The claimant participated personally and through a Burmese interpreter from CTS Language Link. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted.

ISSUES:

Is the appeal timely?

Was the claimant able and available for work effective May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of May 10, 2020. Claimant has worked for this employer since 2018 as a full-time production worker. Claimant was absent from work from May 10, 2020 through August 25, 2020 because he contracted COVID-19 and had ongoing lung issues after. He was released by his doctor to return to work and resumed work on August 26, 2020.

An initial decision dated September 16, 2020 was mailed to claimant's last known address. The decision contained a warning that an appeal was due on September 26, 2020. Claimant has limited English proficiency and needed assistance in translating and understanding the decision. His friend also had to assist in filing the appeal online for him, approximately 10 months after the decision. He filed his appeal on July 27, 2021, upon also receiving a decision denying his request for PUA benefits. See Department Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant's appeal can be accepted as timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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).

Claimant in this case has limited English proficiency and demonstrated he sought assistance in translating and understanding the initial appeal. However, claimant waited nearly 10 months to obtain assistance after the document was mailed. The administrative law judge is not persuaded this was within a reasonable period of time after it was mailed. Claimant knows he needs help translating documents and waiting 10 months is beyond a reasonable period to seek help (even with COVID-19 restrictions). Therefore, the appeal is untimely.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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).

In the alternative, even if claimant's appeal was accepted as timely filed, he was not able and available for work effective May 10, 2020.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge recognizes the claimant has filed his claim due to hardship related to the COVID-19 pandemic. Here, the employer had work available for the claimant. However, the claimant informed the employer he was unable to work due to illness due to COVID-19. The claimant was ill and not available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits effective May 10, 2020.

DECISION:

The unemployment insurance decision dated September 16, 2020 (Reference 01) is **AFFIRMED**. The appeal was untimely and is dismissed.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

September 14, 2021
Decision Dated and Mailed

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NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>