

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMERALD V MARSHALL
Claimant

APPEAL 22A-UI-07428-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JC PENNY CORPORATION INC
Employer

OC: 03/15/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Emerald Marshall, appealed the May 10, 2021, decision (reference 03) that denied claimant benefits as of 09/27/20 as claimant requested and was granted a leave of absence. A telephone hearing was scheduled for May 10, 2022. Claimant personally participated. Employer, JC Penny Corporation, Inc. did not participate. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-07428-DH-T, and 22A-UI-07429-DH-T. Judicial notice was taken of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Did the claimant request and granted a leave of absence?

FINDINGS OF FACT:

Having heard testimony and reviewed evidence in the record, the undersigned finds:

The above decision (reference 03) was mailed to claimant's last known address of record on 05/10/2021. To be timely, an appeal needed to be filed on or before 05/20/2021. The decision also directed appellant to call the customer service line for assistance and tells claimant "IF THIS DECISION DENIES BENEFITS AND IS NOT REVERSED ON APPEAL, IT MAY RESULT IN AN OVERPAYMENT WHICH YOU WILL BE REQUIRED TO REPAY." Appellant timely received the decision, believing she received it on May 13 or 14, 2021. Appellant did not submit an appeal, nor telephone IWD. Claimant did not think much of the decision or that it mattered and made a decision to not appeal.

Claimant appealed the overpayment decision with a reference (04) on March 26, 2022, and the appeal was attached to this matter as well.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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. 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).

Appellant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. The decision was timely received at appellant's last known address. The appeal was not timely submitted. Appellant acknowledged they timely received the appeal, and they made a choice to not appeal the decision. The appeal

is not timely. A good cause reason was not established for the delay. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The representative's May 10, 2021, decision (reference 03) denying benefits as of September 27, 2020, remains in effect, as the appeal is untimely and is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

June 17, 2022
Decision Dated and Mailed

dh/mh