

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROXANE DEMAIO**

Claimant

**APPEAL 21A-UI-22633-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARTIN LUTHER HOME CORPORATION**

Employer

**OC: 04/05/20**

**Claimant: Respondent (1)**

Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) – Timely Appeal

**STATEMENT OF THE CASE:**

Martin Luther Home Corporation, the employer/appellant, filed an appeal from the June 3, 2020, (reference 01) unemployment insurance (UI) decision that allowed benefits as of April 5, 2020 because Ms. Demaio was on a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on December 20, 2021. The employer participated through Janet Warren, executive director, Kimberly Appelling, Equifax representative and witness, and Dennis Mollan, Equifax hearing representative. Ms. Demaio did not participate in the hearing. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the employer's appeal filed on time?  
Is Ms. DeMaio able to and available for work?  
Is Ms. DeMaio temporarily or partially unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to the employer at the correct address on June 3, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by June 13, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. June 13, 2020 was a Saturday; therefore, the deadline was extended to Monday, June 15, 2020.

Ms. Appelling testified that the employer scans IWD decisions into the employer's system when it is received. She testified that the employer does not have a scan of the reference 01

decision. Ms. Appelling testified that the employer also does not have scans of other decisions for other claimants from around June 2020.

Ms. DeMaio filed a new claim effective September 12, 2021. IWD issued a decision, dated September 29, 2021 (reference 01), finding Ms. DeMaio eligible for benefits as of September 12, 2021. The employer received that decision in the mail. The employer filed an appeal via fax October 11, 2021. The appeal was received by Iowa Workforce Development on October 11, 2021. IWD set up appeals for the June 3, 2020, (reference 01) decision (OC: 04/05/20), and the September 29, 2021 (reference 01) decision (OC: 09/12/21).

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the employer's appeal of the June 3, 2020, (reference 01) decision was not filed on time.

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).

The decision in this case rests, at least in part, on the credibility of the witness. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witness, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witness who testified during the hearing, considered the applicable factors listed above, and used his own common sense and experience.

The administrative law judge concludes that the employer received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. The employer's delay in filing its appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing its appeal before the deadline. The employer's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

**DECISION:**

The employer's appeal was not filed on time. The June 3, 2020 (reference 01) decision is affirmed.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

January 20, 2022  
Decision Dated and Mailed

dz/scn