JERMEKA A WILSON Claimant	**APPEAL 20A-UI-13267-AD-T** **ADMINISTRATIVE LAW JUDGE** **DECISION**
DES MOINES IND COMMUNITY SCH DIST Employer	
	OC: 04/05/20 **Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On October 26, 2020, Des Moines Ind Community Sch Dist (claimant/appellant) filed an appeal from the September 23, 2020 (reference 05) unemployment insurance decision that allowed benefits beginning August 23, 2020 based on a finding claimant was unemployed due to a short-term layoff.

A telephone hearing was held on December 17, 2020. The parties were properly notified of the hearing. Claimant did not register a number for the hearing and did not participate. Employer participated by Benefits Specialist Rhonda Wagoner. Food Services Manager Ellen Sarlat participated as a witness for employer

Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to employer at the above address on September 23, 2020. That was employer's correct address on that date. Employer does not know when it received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 3, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. October 3, 2020 was a Saturday, so the deadline to appeal was therefore Monday, October 5, 2020. Employer appealed the decision via email on October 26, 2020. Employer is unsure why the appeal was not filed until three weeks past the deadline.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the appeal was untimely. The September 23, 2020 (reference 05) unemployment insurance decision that allowed benefits beginning August 23, 2020 therefore remains in full force and effect.

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)(a) 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 on 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)
> (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service,* 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job* Service, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission,* 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any …appeal…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 appeal was filed three weeks past the deadline to appeal. Employer has not establish a good cause reason for the late filing. Because the appeal was filed late and a good cause reason for

the lateness has not been established, the administrative law judge lacks jurisdiction to change the decision that was appealed.

DECISION:

The administrative law judge concludes the appeal was untimely. The September 23, 2020 (reference 05) unemployment insurance decision that allowed benefits beginning August 23, 2020 therefore remains in full force and effect.

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Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

__January 4, 2021_____
Decision Dated and Mailed

abd/mh