

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUDRINA GUIZAR
Claimant

LAROSA S A INC
Employer

APPEAL 21A-UI-13511-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 3, 2021, the claimant, Audrina Guizar, filed an appeal from the July 30, 2020 (reference 01) unemployment insurance decision that found claimant was overpaid regular unemployment insurance benefits in the amount of \$1,041.00 for the eleven-week period between March 15, 200, and June 27, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Thursday, August 12, 2021. Appeal numbers 21A-UI-13511-LJ-T, 21A-UI-13514-LJ-T, 21A-UI-13515-LJ-T, 21A-UI-13517-LJ-T, 21A-UI-13518-LJ-T, 21A-UI-13521-LJ-T, 21A-UI-13524-LJ-T, and 21A-UI-13525-LJ-T were heard together and created one record. The claimant, Audrina Guizar, participated. The employer, Larosa S. A., Inc., participated through Brice Quijas. Iowa Workforce Development Quality Control participated through Kara Close, Job Insurance Quality Auditor 2. Exhibits A1 through F13 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is there good cause to treat the appeal as timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to claimant's last known address of record on July 30, 2020. She did receive the decision, though she does not know when she received it. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 9, 2020. The appeal was not filed until June 3, 2021, which is after the date noticed on the disqualification decision.

When claimant received this first overpayment decision, she made a few telephone calls and talked to several different people at Iowa Workforce Development. At some point, claimant's

telephone number changed while she was waiting for a call from someone. Claimant made no effort to update her telephone number with the agency at the time her number changed. Claimant acknowledges the decision informed her of the right to appeal and listed a deadline by which to appeal. She offered no explanation for the delay, and there was nothing that prevented her from exercising her appeal rights.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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:

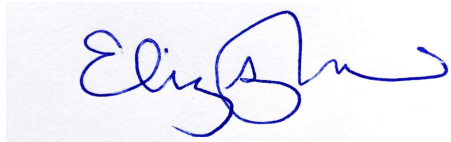
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission 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). 00194 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).

Claimant acknowledges receiving the decision in the mail and, therefore, she could have filed her appeal prior to the appeal deadline. The notice provision of the decision was valid. Claimant'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. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The July 30, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



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

August 16, 2021
Decision Dated and Mailed

lj/kmj