

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BILLIE JEAN J CHAVEZ**  
Claimant

**APPEAL 22A-UI-02424-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES  
INC**  
Employer

**OC: 03/22/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

On December 30, 2021, Billie Jean Chavez (claimant/appellant) filed an appeal from the decision dated October 14, 2020 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant requested and was granted a leave of absence.

A telephone hearing was held on February 21, 2022. The parties were properly notified of the hearing. Claimant participated personally. Thomas L Cardella & Associates Inc (employer/respondent) did not call in or participate. 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 claimant at the above address on October 14, 2020. That was claimant's correct address at that time. The decision states that it may result in an overpayment and becomes final unless an appeal is taken by October 24, 2020. Claimant received the decision in a timely manner but chose not to appeal it. Claimant did not file an appeal until she received a decision dated December 27, 2021 which informed her that resulting overpayment amounts would be withheld from her Iowa income tax refund.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated October 14, 2020 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant requested and was granted a leave of absence is therefore final and remains in force.

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:

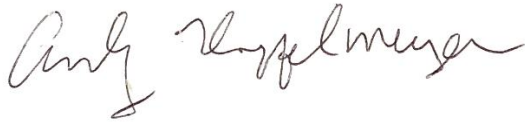
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission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

Claimant received the decision in a timely manner and therefore had a reasonable opportunity to file a timely appeal. Claimant chose not to appeal at that time and the decision therefore became final. Because the decision is final the administrative law judge just not have jurisdiction to change it and it remains in force.

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The decision dated October 14, 2020 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant requested and was granted a leave of absence is therefore final and remains in force.



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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

March 3, 2022  
Decision Dated and Mailed

abd/abd