

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER CLENDINENG**  
Claimant

**HIGHLAND COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 20A-UI-08780-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/24/20**  
**Claimant: Respondent (1)**

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Iowa Admin. Code r. 871-24.32(1)A – Discharge for Misconduct  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On July 30, 2020, Highland Community School Dist (claimant/appellant) filed an appeal from the June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits.

A telephone hearing was held on September 8, 2020. The parties were properly notified of the hearing. Claimant participated personally. Employer participated by Business Manager/Board Secretary/SBO Sue Rich.

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 June 17, 2020. That was employer's correct address on that date. Employer received the decision on June 22, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 27, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. This extended the appeal deadline to Monday, June 29, 2020. Employer appealed the decision via email on July 30, 2020. Ms. Rich did not provide a specific reason for why the appeal was filed late. Ms. Rich stated many papers go across her desk and she is unsure whether she made note of the deadline.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits therefore remains in full force and effect. The appeal is dismissed.

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.”

Employer had seven days to appeal the decision from the date it was received until the appeal deadline. The appeal instructions on the unemployment insurance decision are clear that the decision becomes final unless an appeal is timely filed. Any delay in filing the appeal appears to

have been due to employer's carelessness or inattention to detail. This is not a good cause reason for failing to file a timely appeal. Because employer has failed to establish a good cause reason for the late appeal, the appeal is untimely. The administrative law judge therefore lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The June 17, 2020 (reference 01) unemployment insurance decision that allowed benefits therefore remains in full force and effect. The appeal is dismissed.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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September 10, 2020  
Decision Dated and Mailed

abd/sam