

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID LADE**  
Claimant

**APPEAL 21A-UI-03615-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES EMPLOYMENT GR**  
Employer

**OC: 04/26/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work  
Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.24(15)i – Suitable Work

**STATEMENT OF THE CASE:**

Des Moines Employment Group (employer) appealed a representative's January 7, 2021, decision (reference 04) that concluded the (claimant) was eligible to receive unemployment insurance benefits because no offer of work was given. The claimant did not participate. The employer participated through Human Resources Manager Jamie Scott and Operations Manager Julie Redmond. A hearing was held on March 29, 2021. The administrative law judge took official notice of the agency records. Exhibits 1, 2, D-1, and D-2 were admitted into the record.

**ISSUE:**

1. Whether the employer's appeal is timely? Whether the employer's appeal has reasonable grounds to be considered timely?
2. The issue is whether the claimant refused suitable work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

A disqualification decision was mailed to employer's satellite location at 1520 1st Avenue Northwest in Cedar Rapids, Iowa, on January 7, 2021. An agent of the employer did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 17, 2021. The appeal was not filed until January 22, 2021, which is after the date noticed on the disqualification decision. On the appeal, the employer wrote the following justification, "This decision letter was not sent to our corporate office (where they are usually sent) and instead was sent to one of our satellite offices. The person who received it did not know what to do with it." It also stated the approximate date the appeal was received was on January 22, 2021. During the hearing, Human Resources Manager Jamie Scott explained that she gave the date she received it at the corporate office when she filled out the approximate date received.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes employer's appeal is untimely. Since the employer's appeal is untimely, the administrative law judge lacks jurisdiction to evaluate the merits of the appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 witnesses, 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.*

As stated in the findings of fact, the administrative law judge has determined the employer received the disqualifying decision around the time of the mailing date. The employer gave inconsistent explanations on this issue. As noted in the findings of fact, the employer's position at the time when its memory was the best regarding when it received the decision attempted to excuse its delay on it being mailed to a satellite location and the inability of an agent to redirect it to the right place in time. It is true that the appeal stated the decision was not received until January 22, 2021, but as noted in the findings of fact Ms. Scott unequivocally stated this was on

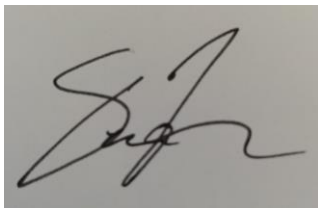
her premise that the employer did not receive it until she received it at the corporate office. After the administrative law judge expressed that this was an unavailing theory, the employer changed its story and said that the letter was not received until January 22, 2021 at the satellite office. Ms. Scott then explained that she just assumed Operations Manager Julie Redmond could not figure out how to appeal when she wrote the explanation on appeal. The administrative law judge does not believe this explanation because Ms. Scott's memory regarding the circumstances would have been fresher when she filed the appeal and it directly contradicts this rationale.

As for the argument that the appeal has grounds to be timely because it was sent to a satellite location, the administrative law judge is unaware of authority stating an appeal has reasonable grounds for delay other than because the appellant has insufficient notice. To find for insufficient notice on these grounds would be to place an unequal burden on claimants. Claimants are held to the standard of reading and comprehending the decision adverse to them and following the instructions for appeal. If a claimant is sent a decision to an address that they have as a valid address to receive mail, they are held responsible for the contents of the mailing, absent exigent circumstances. Those exigent circumstances are not present here.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The January 7, 2021, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Sean M. Nelson  
Administrative Law Judge  
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April 12, 2021  
Decision Dated and Mailed

smn/lj