

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ZEYAD A HAMMADI**  
Claimant

**APPEAL NO. 21A-UI-14251-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/07/21**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(6) – Department Approved Training

**STATEMENT OF THE CASE:**

The claimant filed a late appeal from the June 4, 2021, reference 03, decision that denied department approved training effective May 30, 2021. After due notice was issued, a hearing was held on July 20, 2021. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-12057-JTT. Exhibits A through G were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, NMRO, the application for department approved training dated April 3, 2020, the application for department approved training dated April 25, 2021, and the administrative law judge decision in Appeal Number 20A-UI-02967-DG-T, the May 4, 2021 (reference 02) decision, and the June 4, 2021 (reference 03) decision.

**ISSUES:**

Whether the claimant's appeal from the June 4, 2021, reference 03, decision was timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 7, 2021. On June 4, 2021, Iowa Workforce Development mailed the June 4, 2021, reference 03, decision to the claimant's Clive, Iowa last-known address of record. The weight of the evidence establishes that the claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant does not know what day he received the decision. The claimant discarded the envelope that would have provided the postmark date of the correspondence. The reference 03 decision denied department approved training effective May 30, 2021. The claimant advises that he was not seeking department approved training for the fall academic term, but not the summer term. The June 4, 2021 decision stated that the decision would become final unless an appeal was postmarked by June 14, 2021 or was received by the Appeals Section by that date. On June 18, 2021, the claimant completed an online appeal. The claimant attached fall 2021 class schedules.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

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 Ct. 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.*

The weight of the evidence establishes a late appeal from the June 4, 2021, reference 03, decision. The weight of the evidence establishes that the claimant's testimony regarding when he received the decision is not credible or reliable. The claimant cannot say when he received the decision. The claimant discarded the envelope in which the correspondence arrived and thereby discarded a important piece of evidence. The weight of the evidence establishes that the claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the June 14, 2021 deadline, but delayed filing the appeal to June 18, 2020. The late filing of the appeal on June 18, 2021 was attributable to the claimant and not attributable to Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in this matter. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

#### **DECISION:**

The claimant's appeal from the June 4, 2021, reference 03, decision was untimely. The decision that denied department approved training effective May 30, 2021 remains in effect.



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James E. Timberland  
Administrative Law Judge

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July 30, 2021  
Decision Dated and Mailed

jet/lj