

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEATRA L PARKER**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 21A-UI-19321-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21**  
**Claimant: Appellant (6)**

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Iowa Code § 96.4(3) - Able and Available to Work  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant, Deatra Parker, filed an appeal on August 31, 2021 from the June 17, 2021, (reference 02) unemployment insurance decision that concluded they were not eligible for unemployment insurance benefits due to their not being able to perform work due to illness, as of March 28, 2021. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 22, 2021. The claimant participated. The employer, West Liberty Foods LLC, responded to the hearing notice and provided a telephone number at which they could be reached for the scheduled hearing, but failed to answer the call. A voicemail message was left, but they did not return the call. Judicial notice was taken of the administrative file.

**ISSUES:**

Is claimant's appeal timely?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on June 17, 2021. The appeal deadline is listed as June 27, 2021. The appeal was submitted August 31, 2021. Appellant received the decision, and decided that she would not appeal; but she would re-file her claim with her current circumstances. It was only when she received the decision dated August 26, 2021, on her re-filing, that she filed an appeal for both cases.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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). 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).

Appellant timely received the decision in the mail and as such, had an opportunity to file an appeal prior to the appeal deadline. Appellant'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 June 17, 2021, (reference 02) unemployment insurance decision is **AFFIRMED**. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Darrin T. Hamilton  
Administrative Law Judge

November 8, 2021  
Decision Dated and Mailed

dh/kmj