

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BAILY SITZMANN**  
Claimant

**KSUX KSCJ BROADCASTING CO INC**  
Employer

**APPEAL 21A-UI-06892-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/23/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On March 4, 2021, KSUX/KSCJ Broadcasting Co Inc (employer/appellant) filed an appeal from the November 20, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 17, 2021. The parties were properly notified of the hearing. Baily Sitzmann (claimant/respondent) participated personally. Employer participated by Director of Sales Dave Grosenheider.

Employer's exhibit 1 admitted. Official notice was taken of the administrative record. The parties waived notice on the issue of whether the appeal was timely.

**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 November 20, 2020. That was employer's correct address at that time. Employer received the decision around that time.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 30, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Employer did not initially appeal the decision allowing benefits because it believed claimant would "withdraw" her claim. Employer was prompted to appeal upon receiving a Statement of Charges on or about February 9, 2021, which included charges for claimant.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal was untimely. The November 20, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits 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."

Employer received the decision in a timely manner. Its delay in appealing was not due to any agency error or misinformation or delay of the United States Postal Service. The delay was due to its erroneous belief that claimant could "withdraw" the claim. The decision clearly states that it becomes final unless an appeal is taken. Employer had a reasonable opportunity to file a timely appeal. The appeal is therefore untimely and the decision is final and remains in force.

**DECISION:**

The administrative law judge concludes the employer's appeal was untimely. The November 20, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits 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

May 26, 2021  
Decision Dated and Mailed

abd/ol