AMY J DOLLEY Claimant	**APPEAL 21A-UI-24437-LJ-T** **ADMINISTRATIVE LAW JUDGE** **DECISION**
OLIN CONS SCHOOL Employer	
	OC: 03/29/20 **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 1, 2021, claimant Amy J. Dolley filed an appeal from the January 6, 2021 (reference 01) unemployment insurance decision that denied benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Monday, January 3, 2021. Appeal numbers 21A-UI-24437-LJ-T, 21A-UI-24439-LJ-T, 21A-UI-24440-LJ-T, 21A-UI-24441-LJ-T, and 21A-UI-24442-LJ-T were heard together and created one record. The claimant, Amy J. Dolley, participated. The employer, Olin Consolidated School District, did not appear for the hearing and did not participate. Claimant did not submit any documents to be admitted as exhibits for the hearing. Department's exhibits D-1 and D-1 were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision based on claimant's separation from the Olin Consolidated School District was mailed to claimant's last known address of record on January 6, 2021. She did receive the decision shortly after it was issued. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay."

The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 16, 2021. The appeal was not filed until November 1, 2021, which is after the date noticed on the disqualification decision. Claimant explained that she did not take any action when she received the decision because she did not think she needed to. She believed the decision only disqualified her from receiving future benefits and did not affect the benefits she had previously received.

At the time claimant applied for benefits, she was intending to apply for Pandemic Unemployment Assistance benefits as she was an unemployed self-employed individual. When claimant received the decision in the mail indicating her prior educational employer was somehow connected to her claim for benefits, she did not contact the agency to inquire or seek any additional information.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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 Date 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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant'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. Based on the testimony in the record, it appears claimant misunderstood the decision she received. While this is unfortunate, this is not a justification for finding the appeal timely. 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 January 6, 2021, (reference 01) 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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Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

___January 26, 2022___
Decision Dated and Mailed

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