

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSE A RAMOS CENTENO**  
Claimant

**APPEAL 21A-UI-09322-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 05/17/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On March 29, 2021, the claimant, Jose A. Ramos Centeno filed an appeal from the August 3, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to illness. The parties were properly notified of the hearing. A telephonic hearing was commenced on Thursday, June 17, 2021, and was continued to Thursday, June 24, 2021. Appeal numbers 21A-UI-09322-LJ-T and 21A-UI-09323-LJ-T were heard together and created one record. The claimant, Jose A. Ramos Centeno, participated. The employer, Packers Sanitation Services, Inc., participated on June 17 through Jose Martinez, Complex Manager, and did not answer the telephone when called on June 24. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record. CTS Language Link interpreters Catherin (ID number 12980) and Luciena (ID number 13437) provided interpretation services for the hearing.

**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 as follows:

A disqualification decision was mailed to claimant's last known address of record on August 3, 2020. He did receive the decision, but he does not recall when he received it. He does not remember if he read it or not. He does not remember if he saw the deadline for appealing the decision.

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 August 13, 2020. The appeal was not filed until March 29, 2021, which is after the date noticed

on the disqualification decision. Claimant does not remember why he did not appeal the decision back in August 2020.

An overpayment decision was mailed to claimant's last known address of record on March 22, 2021. Claimant did receive that decision. He believes he read that decision when he received it. Claimant chose to appeal that decision because he believes it is incorrect.

The overpayment issue in this case was created by a disqualification decision that has now been affirmed. (See 21A-UI-09322-LJ-T) Subsequently, the agency issued a decision dated April 13, 2021 (reference 06) amending the reference 03 decision and reducing the amount of the overpayment due to an eligibility decision dated January 5, 2021 (reference 02) that was affirmed. (See 21A-UI-03050-S1-T) Claimant did receive benefits in the gross amount of \$4,810.00.

### **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 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).

Here, claimant did not present any information supporting a finding that his delay in filing the appeal was due to either agency error or the U.S. Postal Service. Claimant had no explanation for failing to file his appeal on time. The record indicates he simply received the August 3, 2020 decision and decided not to appeal it at that time. The administrative law judge finds that claimant's appeal was not filed on time, and therefore the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

The August 3, 2020 (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  
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Des Moines, Iowa 50319-0209  
Fax (515)478-3528

July 6, 2021  
Decision Dated and Mailed

lj/mh