

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**EMILEE J OLSON**  
Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL 21A-UI-16152-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On July 22, 2021, Emilee Olson (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated February 3, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$1,518.00 based on a July 23, 2020 decision denying benefits.

On August 23, 2021, notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 14, 2021 at 10:05 a.m. Claimant submitted a request to reschedule the hearing via email on September 13, 2021 at 4:59 p.m. The reason for the request was that she would be working during the hearing time. Claimant indicated she did not request a reschedule prior to that time because she lost the hearing notice.

The undersigned denied the request to reschedule, as it was not made at least three days prior to hearing and emergency circumstances did not exist to justify the extremely late request. The hearing notice contains the requirement that reschedule requests be made at least three days prior to the hearing. Claimant's failure to calendar the hearing or take other steps to ensure she was available at the time of hearing is not a good cause reason for the late request.

Appeals Bureau staff did contact claimant on the morning of the hearing to notify her that the reschedule request was denied. However, she was offered the opportunity to participate via written statement provided to both the Appeals Bureau and the opposing party prior to the hearing.

Claimant did submit a written statement to the Appeals Bureau and the opposing party approximately 15 minutes prior to the hearing. However, that statement was not available at the time of hearing and as such no hearing was held. The administrative law judge received the statement approximately 45 minutes after the hearing start time and reopened the record to review it at that time. The statement did not provide a reason for the late appeal.

**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 claimant at the address of record on February 3, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 13, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on July 22, 2021. Claimant has not provided a reason for the delay in appealing.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated February 3, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$1,518.00 based on a July 23, 2020 decision denying 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."

The appeal of the decision is over four months late. Claimant has not established a good cause reason for the delay in appealing and the administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The decision dated February 3, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$1,518.00 based on a July 23, 2020 decision denying 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

September 20, 2021  
Decision Dated and Mailed

abd/mh

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.