

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXIS NEUPANE

Claimant

APPEAL 22A-UI-09180-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA 80 RESTAURANTS LTD

Employer

OC: 03/22/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 12, 2022, claimant Alexis Neupane filed an appeal from the March 23, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was still employed and therefore unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Friday, May 27, 2022. Appeal numbers 22A-UI-09180-LJ-T, 22A-UI-09182-LJ-T, 22A-UI-09185-LJ-T, and 22A-UI-09186-LJ-T were heard together and created one record. The claimant, Alexis Neupane, participated. The employer, Iowa 80 Restaurants Ltd., did not appear for the hearing and did not participate. Department's Exhibits D-1, D-2, D-3, D-4, and D-5 were marked and 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 decision finding claimant was denied benefits effective March 22, 2020, was mailed to her last known address of record on March 23, 2021. (Exhibit D-1) She did receive the decision sometime in 2021. A second decision finding claimant was denied benefits effective April 6, 2021 was mailed to her last known address of record on April 6, 2021. (Exhibit D-2) She did receive this decision sometime in 2021 as well.

The first sentence of both decisions 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." Each decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by a certain date: April 2, 2021; and April 16, 2021. Claimant did not file an appeal at any point in 2021.

When claimant opened her claim, she received mailings from Iowa Workforce Development ("IWD") indicating she was initially found eligible to receive unemployment insurance and

supplemental federal benefits. Later, when she received this decision, she decided not to appeal it. She testified, "I don't know all the rules when it comes to unemployment. If I wasn't eligible, then I just wasn't eligible." Claimant did not have her parents to assist her with the appeals process, and she had never gone through the process before.

Subsequently, claimant received two overpayment decisions, both dated April 1, 2022. (Exhibits D-3 and D-4) Claimant remembers reading these decisions and concluding she wanted to appeal them. She had been told previously by IWD that she was eligible for these benefits, and she did not believe that she had been overpaid. The deadline to appeal the overpayment decisions was Monday, April 11, 2022. Claimant filed her appeal on Tuesday, April 12, 2022. (Exhibit D-5) Claimant believes she may have had the date confused and accidentally appealed late.

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

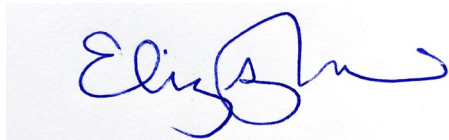
due to division error or misinformation or to delay or other action of the United States postal service.

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, 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. Claimant did not make any effort to reach out to IWD and request assistance in understanding the decisions she received or seek help with filing an appeal. Her overall ignorance of the process is not a valid excuse for a late appeal. 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 March 23, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 7, 2022
Decision Dated and Mailed

lj/lj