

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT LAVENDER
Claimant

POLARIS INDUSTRIES INC
Employer

APPEAL 21A-UI-23280-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (1)

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:

Claimant filed an appeal from the February 9, 2021 (reference 01) unemployment insurance decision that denied benefits effective December 13, 2020 finding claimant was on a leave of absence and, thus, not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2021. Claimant participated. Employer participated through Crystal Carlson, Human Resources Generalist, and Caroline Tiff, Human Resources Assistant. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant is able to and available for work.

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 correct address on February 9, 2021. Claimant does not recall receiving the decision. Claimant does not know how long it usually takes mail from Des Moines, Iowa to be received in Estherville, Iowa. Claimant keeps all correspondence from Iowa Workforce Development organized in one place. Claimant did not review the correspondence prior to the hearing to determine whether the decision was amongst the correspondence.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 19, 2021. Claimant appealed the decision online on October 18, 2021 after receiving overpayment decisions. Claimant's appeal was received by Iowa Workforce Development on October 18, 2021. Claimant gave no reason for the delay in submitting the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was untimely.

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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant appealed the decision until after the deadline. Claimant has not established that his delay was due to agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The February 9, 2021 (reference 01) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
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December 22, 2021
Decision Dated and Mailed

acw/acw