

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ASHTON D SPITTLER**  
Claimant

**RAILCREW XPRESS LLC**  
Employer

**APPEAL 20A-UI-12797-DZ-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/5/2020  
Claimant: Appellant (6)**

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

**STATEMENT OF THE CASE:**

Ashton D Spittler, the claimant/appellant, filed an appeal from the July 13, 2020, (reference 01) unemployment insurance decision that denied him unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 8, 2020. Claimant participated and testified. Employer participated and testified. Official notice was taken of the administrative record.

**ISSUES:**

Did claimant file an appeal on time?

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending April 5, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on July 13, 2020. Claimant received the decision but isn't sure when he received it. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 23, 2020. Claimant filed his appeal on October 14, 2020.

After speaking with an Iowa Workforce Development representative, claimant was under the impression that he needed to file his appeal in this matter after his Pandemic Unemployment Assistance (PUA) claim was complete. The Iowa Workforce Development representative's PUA decision dated August 27, 2020 was mailed to the claimant at the correct address. Claimant filed a timely appeal to that decision. A hearing was scheduled in that case for October 14, 2020 and a default decision was issued on October 15, 2020. See 20A-DUA-00299.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal was not filed on time.

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).

In this case, even accepting as true that claimant received bad advice from one or more Iowa Workforce Development representatives that he should wait to file his appeal in this case until after his PUA case was complete, the claimant didn't even follow the bad advice. Claimant's initial PUA decision was mailed to him on August 27, 2020. He then filed a timely appeal and waited over a month before filing his appeal in this matter, even though his PUA claim wasn't complete.

Claimant knows how to file an appeal as evidenced by his filing an appeal in his PUA case. Claimant did not file an appeal in this case until almost three months after the appeal deadline. Claimant's appeal was not filed on time. Therefore, the administrative law judge has no authority to change the July 13, 2020 decision that denied him unemployment insurance benefits.

**DECISION:**

The July 13, 2020, (reference 01) unemployment insurance decision is affirmed. The decision denying benefits remains in effect.



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Daniel Zeno  
Administrative Law Judge

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Decision Dated and Mailed

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