

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PEYTON N BROWN
Claimant

BUILDING BLOCKS CHILDCARE & PRESC
Employer

APPEAL 21A-UI-13274-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On May 31, 2021, the claimant, Peyton N. Brown, filed an appeal from the July 2, 2020 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not willing to work the number of hours required by her occupation. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, August 9, 2021. Appeal Hearings 21A-UI-13274-LJ-T, 21A-UI-13275-LJ-T, and 21A-UI-13276-LJ-T were all held together. The claimant, Peyton N. Brown, participated. The employer, Building Blocks Childcare & Preschool, participated through Stacy Eldridge, Manager for Building Blocks. Claimant's Exhibits and B were received and admitted into the record without objection. 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: The reference 02 decision finding claimant ineligible for benefits was mailed to claimant's last known address of record on July 2, 2020. She did receive the decision within ten days. 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 July 12, 2020. Claimant chose not to appeal at the time she received the reference 02 decision. She had never filed for unemployment insurance benefits before and did not know how the process worked. Instead of reaching out to Iowa Workforce Development for assistance or reading the instructions on how to appeal on her decision, claimant spoke to her mom and then decided not to appeal.

Next, the reference 03 decision finding claimant overpaid regular unemployment insurance benefits was mailed to claimant's last known address of record on December 8, 2020. Claimant

received that decision within ten days. Instead of appealing that decision, claimant elected to pay the outstanding balance. Claimant admits she made no attempt to appeal this decision at the time it was received.

Finally, the reference 04 decision finding claimant overpaid Federal Pandemic Unemployment Compensation benefits was mailed to claimant's last known address of record on May 25, 2021. Claimant received that decision and appealed it on May 31, 2021. Claimant's May 31 appeal letter was applied to all the decision adverse to her.

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). 00194 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 received the reference 02 decision in July 2020 and was aware at that time that she was not eligible for unemployment insurance benefits. Claimant elected not to file an appeal of that decision at the time it was received. She had no barriers to accessing the agency for information on how to appeal, but she chose not to contact the agency with her questions. 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. 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 July 2, 2020 (reference 02) unemployment insurance decision is affirmed. The appeal was not timely filed. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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August 13, 2021
Decision Dated and Mailed

lj/scn