

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TITANIA M BUCHANAN
Claimant

APPEAL 22A-UI-11805-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/01/21
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 May 7, 2022, claimant Titania M. Buchanan filed an appeal from the November 23, 2021 (reference 03) unemployment insurance decision that denied benefits for the week ending October 2, 2021, based on a determination that claimant was out of town the majority of the week. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, June 22, 2022. Appeal numbers 22A-UI-11804-LJ-T, 22A-UI-11805-LJ-T, and 22A-UI-11806-LJ-T were heard together and created one record. The claimant, Titania M. Buchanan, participated. Claimant's Exhibits 1, 2, and 3 and Department's Exhibit D-1 were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision warning claimant to make proper work searches was mailed to her last known address of record on October 19, 2021. (Exhibit 2) She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 29, 2021. Claimant understood that she could appeal this warning, but she chose not to appeal because she agreed that she had not made any job contacts during the week in question.

Next, the decision finding claimant ineligible for benefits because she was out of town was mailed to her last known address of record on November 23, 2021. (Exhibit 3) 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 December 3, 2021. Claimant understood she could appeal

this decision as well. However, she did not appeal this decision because she agreed that it was correct.

Finally, the decision finding claimant overpaid one week of benefits was mailed to her last known address of record on April 27, 2022. She did receive the decision within ten days. Claimant promptly appealed the overpayment decision, as she does not believe she actually received any fund for the week ending October 2, 2021.

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.

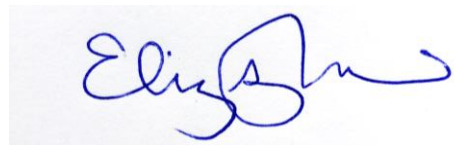
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.

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 chose not to appeal, which was within her rights. However, the administrative law judge has no authority at this point to change the underlying decision. 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 November 23, 2021, (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 29, 2022
Decision Dated and Mailed

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