

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN W MINARD
Claimant

APPEAL 22A-UI-08103-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/02/21
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year

STATEMENT OF THE CASE:

On April 2, 2022, claimant filed an appeal from the May 18, 2021, (reference 01) unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount in insured wages during or after the prior claim year. After due notice was issued, a hearing was held on May 13, 2022, and was held together with appeal 22A-UI-08104-AR-T and 22A-UI-08105-AR-T. Claimant, Brian W. Minard, participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's weekly benefit amount during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on May 18, 2021. He testified that he could not remember when he received it, but he thought he had received the decision. 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 May 28, 2021. The appeal was not filed until April 2, 2022, which is after the date noticed on the disqualification decision. Claimant could provide no testimony regarding why the appeal was not filed until after the appeal deadline in the letter.

The claimant's weekly benefit amount (WBA) in the prior claim year effective May 3, 2020, is \$481.00. They wish to claim benefits during a second claim year effective May 2, 2021.

The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning May 3, 2020. Claimant testified that they

have not worked for any employer since separating from employer Viking Pump prior to opening the claim in 2020. The administrative record reflects that no insured quarterly wages were reported to IWD by any business entity since claimant opened the claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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 has not established that the delay in filing his appeal was due to Agency error or delay by 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 to decide the other issue in this matter.

However, even if claimant's appeal was timely filed, the administrative law judge would affirm the decision of the representative. Claimant has not earned at least eight times his weekly benefit amount in insured wages during or after the time at which he opened in claim in May 2020. He is not eligible to receive benefits in a second benefit year, effective May 2, 2021.

DECISION:

The May 18, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. In the alternative, the decision of the representative is affirmed because claimant has not worked and earned at least eight times his weekly benefit amount in order to qualify for benefits in a second benefit year. If claimant does earn eight times the prior claim year's weekly benefit amount in insured wages, they may present evidence of that to IWD to determine eligibility.



Alexis D. Rowe
Administrative Law Judge

June 8, 2022
Decision Dated and Mailed

ar/kmj