

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREGORY HERTGES

Claimant

TYSON FRESH MEATS INC

Employer

APPEAL 21A-UI-25511-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Gregory Hertges, the claimant/appellant, filed an appeal from the February 2, 2021, (reference 01) unemployment insurance (UI) decision that denied REGULAR UI benefits as of July 19, 2020 because he was not able to work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2022. Mr. Hertges participated and testified. The employer participated through Lori Direnzo, human resources administrator. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Hertges' appeal filed on time?
Is Mr. Hertges able to and available for work?
Is Mr. Hertges temporarily or partially unemployed?
If so, is the employer's account subject to charge?
Is Mr. Hertges on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Hertges at the correct address on February 2, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 12, 2021.

Mr. Hertges received the decision in the mail. He called IWD and a representative told him about his appeal rights. Mr. Hertges had applied for Pandemic Unemployment Assistance (PUA) benefits on January 11, 2021. On January 23, 2021, IWD denied Mr. Hertges' PUA application.

IWD issued two additional decisions finding Mr. Hertges was overpaid REGULAR UI benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits. Mr. Hertges received at least one of those decisions in the mail. Mr. Hertges filed an appeal online on November 17, 2021. The appeal was received by Iowa Workforce Development on November 17, 2021. IWD set up appeals for the two overpayment decisions and the reference 01 decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hertges' appeal of the reference 01 decision 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).

Mr. Hertges received the reference 01 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr.

Hertges' delay in filing his appeal 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 in filing his appeal before the deadline. Mr. Hertges' appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Hertges' appeal of the reference 01 decision was not filed on time. The February 2, 2021 (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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February 9, 2022
Decision Dated and Mailed

dz/mh