

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA A IXTACUY
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 22A-UI-03238-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/07/21
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Amanda A Ixtacuy, the claimant/appellant, filed an appeal from the November 24, 2021 (reference 01) unemployment insurance (UI) decision that denied benefits as of November 7, 2021 because Ms. Ixtacuy was not able to work due to injury. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2022. Ms. Ixtacuy participated personally through a CTS Language Link Spanish interpreter. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Ixtacuy's appeal filed on time?
Is Ms. Ixtacuy able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Ixtacuy at the correct address on November 24, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by December 4, 2021.

Ms. Ixtacuy received the decision in the mail. Less than one week later, Ms. Ixtacuy called IWD to ask about her options. The IWD representative told Ms. Ixtacuy that she had to file weekly claims to receive benefits. Ms. Ixtacuy had not filed any weekly claims by that point. Ms. Ixtacuy attempted to file weekly claims but was unable to do so. Ms. Ixtacuy called IWD again, but she was unable to reach anyone. Ms. Ixtacuy went to an IWD office to get further assistance. Spanish is Ms. Ixtacuy's primary language.

IWD issued a different decision, dated January 6, 2022 (reference 02), denying Ms. Ixtacuy benefits because she did not provide proof to Iowa Workforce Development (IWD) that she is a citizen of the United States of America, or that she is legally authorized to work in the United States of America. Ms. Ixtacuy received that decision in the mail. Ms. Ixtacuy filed an appeal

online on January 15, 2022. The appeal was received by Iowa Workforce Development on January 15, 2022. IWD set up appeals for the reference 01 and reference 02 decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Ixtacuy's 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).

Ms. Ixtacuy 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. Ms. Ixtacuy's delay in filing her 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. The language barrier caused some delay in Ms. Ixtacuy filing her appeal. However, Ms. Ixtacuy's appeal was

filed over six weeks past the deadline. Ms. Ixtacuy's appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Ixtacuy's appeal was not filed on time. The November 24, 2021, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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March 21, 2022
Decision Dated and Mailed

dz/kmj