

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAKINYA M WOODLAND
Claimant

SEDONA STAFFING INC
Employer

APPEAL 22A-UI-02709-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timely Appeal
Iowa Code § 96.4(3) - Able and Available to Work
Iowa Admin. Code r. 871-24.23(25) - Eligibility - A&A - Out of town, personal

STATEMENT OF THE CASE:

On September 1, 2021, Lakinya Woodland, claimant/appellant, appealed the October 20, 2020, (reference 01) unemployment insurance decision that denied unemployment insurance benefits from 07/05/2020 through 07/18/2020, as she was on vacation and not available for work. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 24, 2022. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-02709-DH-T, 22A-UI-02710-DH-T, and 22A-UI-02711-DH-T. Claimant personally participated. Employer, Sedona Staffing, Inc., participated through Edith Rubalcava, risk manager and party representative and Kelly Weaver, Clinton branch manager. Judicial notice was taken of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

To be timely, claimant's appeal needed to be filed by October 30, 2020. The appeal was filed on September 1, 2021. Claimant at first stated she never received this decision. Later, claimant advised she got the decision and decided not to appeal it as she believed she never received any benefits for the time window in question. Claimant received the decision in mid-June, or July or early August (prior to any overpayment decision), but chose not to appeal. When she appealed the overpayment decisions, it was applied to this appeal as well.

Employer called claimant on July 10, 2020, only to learn claimant was on vacation, not to return to work until July 20, 2020. Claimant initially agreed that she was on vacation for the two weeks in question, but later, changed her testimony that she was only on vacation from July 15-19, 2020. Claimant was on vacation in Nebraska, for the majority of the weeks of July 5 and 12, 2020

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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).

Claimant can only best narrow down receiving the decision regarding not being available for work due to being on vacation to sometime in mid-June, July, or early August 2021. The untimeliness of the arrival of the decision was not the fault of claimant/appellant. Upon receipt of the decision, claimant did not file an appeal, as she believed she received no benefit payments for that time

frame. It was only after at least ten days had passed and the receipt of an overpayment decision that claimant filed an appeal. The record shows that the appellant did not receive the decision within ten days of the mailing date. After she received the decision, she took more than ten days to file her appeal.

The administrative law judge concludes that her failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the record, considering the applicable factors listed above, and using his own common sense and experience, the undersigned finds the employer's version of events to be more credible than the claimant's recollection of those events and claimant's version that is adverse to her to be more credible than her changed version that would be more favorable toward her.

DECISION:

The October 20, 2020, (reference 01) unemployment insurance decision denying benefits remains in effect, as the appeal is not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

April 7, 2022
Decision Dated and Mailed

dh/mh