

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VIVIANA M CASTRO
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 22A-UI-09970-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On April 19, 2022, claimant Viviana M. Castro filed an appeal from the February 25, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit her employment on July 20, 2019. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Wednesday, June 8, 2022. Appeal numbers 22A-UI-09970-LJ-T, 22A-UI-09971-LJ-T, and 22A-UI-09972-LJ-T were heard together and created one record. The claimant, Viviana M. Castro, participated. The employer, Wells Enterprises, Inc., participated through Stacey Roupe, HR Service Center Representative. Department's Exhibits D-1 and D-2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision stating claimant was not eligible for benefits because she voluntarily quit her employment was mailed to claimant's last known address of record on February 25, 2021. Claimant does not know the exact date on which the decision arrived, because she has her mail from Iowa Workforce Development sent to her parents' home, which is five hours away from where she resides. 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 March 7, 2021. The appeal was not filed until April 19, 2022, which is after the date noticed on the disqualification decision. Claimant remembers receiving the notice regarding the fact-finding interview, and she then received the decision regarding her separation after that. She did not appeal the decision because she "did not understand what was going on." Later, when she received the overpayment decisions, she filed an appeal.

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.

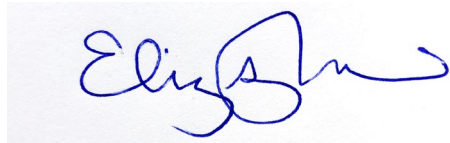
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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's address of record 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. The fact that claimant chooses to direct her mail from the agency to an address five hours away from where she lives is beyond the control of the agency, and any delay associated with that distance must be attributed to claimant herself. 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 February 25, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 9, 2022
Decision Dated and Mailed

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