

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY P LEE
Claimant

BAKER ELECTRIC INC
Employer

APPEAL 22A-UI-11675-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On May 6, 2022, claimant Zachary P. Lee filed an appeal from the March 30, 2021 (reference 01) unemployment insurance decision that denied benefits effective November 29, 2020, based on a determination that claimant was still employed at his same hours and wages. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Tuesday, June 21, 2022. Appeal numbers 22A-UI-11675-LJ-T, 22A-UI-11676-LJ-T, 22A-UI-11677-LJ-T, and 22A-UI-11678-LJ-T were heard together and created one record. The claimant, Zachary P. Lee, participated. The employer, Baker Electric, Inc., did not appear for the hearing and did not participate. Department's Exhibits D-1, D-2, D-3, and D-4 were 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: The decision disqualifying claimant from receiving benefits effective November 29, 2020, was mailed to his last known address of record on March 30, 2021. (Exhibit D-1) He did receive the decision. While he could not recall exactly when he received it, claimant said it generally takes two days for him to receive mail that has been mailed within Des Moines. 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 April 9, 2021.

The decision disqualifying claimant from receiving benefits for the one-week period ending January 30, 2021, was mailed to the same address on March 16, 2021. (Exhibit D-2) Another decision disqualifying claimant from receiving benefits, this time for the one-week period ending March 6, 2021, was mailed to the same address on March 26, 2021. (Exhibit D-3) Claimant

recalls receiving both of these decisions. These decisions had appeal deadlines of March 26, 2021; and April 5, 2021, respectively.

Claimant did not appeal any of the decisions he received in March 2021. He explained that someone in the apprenticeship class he was attending told him not to appeal because "it would take too long." Claimant admits that no one from Iowa Workforce Development advised him not to appeal.

One year later, an overpayment decision was mailed to claimant's last known address of record on April 29, 2022. He did receive the decision within ten days. When claimant received the overpayment decision, he reached out to Iowa Workforce Development and was advised to file an appeal because he "selected the wrong box" for the week that he had been found overpaid. Next, claimant filed an appeal on May 6, 2022. This appeal was applied to both the overpayment decisions and the three disqualification decisions.

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

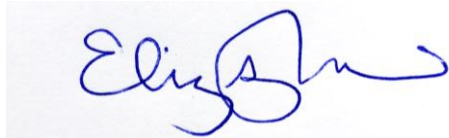
established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant relied on the advice of someone in his apprenticeship class rather than contacting Iowa Workforce Development to ensure he had accurate information. 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. 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 March 30, 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 24, 2022
Decision Dated and Mailed

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