

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA GRIMES

Claimant

APPEAL 22A-UI-05150-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST

Employer

OC: 05/09/21

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 1, 2021, (reference 04) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on April 7, 2022, and was consolidated with the hearing for appeal number 22A-UI-05151-AR-T. The claimant, Cynthia Grimes, participated personally. The employer, Des Moines Independent Community School District, participated through Rhonda Wagoner. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record on October 1, 2021. Claimant received the decision sometime in October 2021. She testified that she attempted to appeal that decision in a timely manner. She tried a few times. Each time, the website returned a screen that stated she had submitted her appeal. However, she did not receive an email confirming her appeal. She did not provide a reason why she did not follow up regarding her attempts to appeal thereafter. Claimant submitted her appeal on February 24, 2022, after she received an overpayment decision.

Claimant was employed full time as a custodian from March 3, 2015, until this employment ended on June 16, 2021, when she resigned.

In March 2021, claimant became ill and was diagnosed with COVID-19. She was so ill that she could not work. She remained ill for weeks thereafter. Additionally, she was caring for her

children, who also contracted COVID-19. Claimant was unable to return to work indefinitely. She informed the employer of her inability to return in March 2021. Thereafter, the employer did not receive regular communication from claimant, nor did it receive any additional doctor's notes from claimant.

In June 2021, claimant's mother invited her to live in Texas because of claimant's continued inability to return to work. Claimant was also aware that she might be subject to discharge if she could not return to work at some point. On June 16, 2021, claimant delivered a written resignation to the employer, which stated that she was resigning due to her health and a planned relocation. Claimant never did relocate out of state.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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 in October 2021. Claimant testified that she submitted her appeal multiple times, indicating that she believed something was amiss regarding the submission of the appeal. However, despite receiving no confirmation email, she did not follow up to ensure that the appeal was submitted until she received an overpayment decision in February 2022. Claimant had the opportunity to appeal the decision well before she did so in February 2022, and her appeal is not timely filed.

Even if the appeal was filed timely, the administrative law judge would still affirm the representative's decision denying benefits. Claimant voluntarily quit work due to a health condition that was not work related, and due to a planned relocation. These do not constitute good-cause reasons attributable to the employer.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The October 1, 2021, (reference 04) unemployment insurance decision is affirmed.



Alexis D. Rowe
Administrative Law Judge

April 13, 2022
Decision Dated and Mailed

ar/kmj