

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS A KREJCI
Claimant

APPEAL 21A-UI-24320-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/25/21
Claimant: Appellant (6)**

Iowa Code § 96.4(4) - Eligibility of Benefits
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On November 3, 2021, claimant/appellant, Douglas Krejci, filed an appeal from the September 27, 2021, (reference 01) unemployment insurance decision. The decision denied claimant from receiving benefits effective 07/25/2021 due to records indicating claimant was not paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 29, 2021 at 9:00AM and the hearings were consolidated. The claimant participated. The Department did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is claimant's appeal timely?

FINDINGS OF FACT:

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

Claimant's appeal is dated November 3, 2021. To be timely, the appeal needed to be filed on or before October 7, 2021. The decision was mailed to claimant's last known addresses, which is the same address he currently uses. Claimant recalls getting the decision, making some phone calls to the local and the Des Moines IWD offices. No one told claimant he should not appeal the decision. He does not know why he did not file an appeal right away, he just did not appeal. Claimant acknowledges the appeal is late.

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).

Appellant'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 decision was timely received at claimant's last known address. The appeal was not timely submitted. Claimant did not timely file an appeal of his own volition. A good cause reason was not established for the delay. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The September 27, 2021, (reference 01) unemployment insurance decision that denied claimant benefits effective 07/25/2021 remains in effect as the appeal in this case was not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

January 25, 2022

Decision Dated and Mailed

dh/kmj