

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LACEY L LANTAU
Claimant

APPEAL 21A-UI-22037-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

**OC: 05/30/21
Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Lacey L Lantau, the claimant/appellant, filed an appeal from the August 11, 2021, (reference 02) unemployment insurance (UI) decision that denied REGULAR UI benefits based on an October 1, 2020 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 2, 2021. Ms. Lantau participated and testified. Joshua Goldstein, case manager, testified in favor of Ms. Lantau. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted as evidence.

ISSUES:

Is Ms. Lantau's appeal filed on time?
Did Ms. Lantau voluntarily quit without good cause attributable to the employer?
Is Ms. Lantau able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Lantau at the correct address on August 11, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 21, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 21, 2021 was a Saturday; therefore, the deadline was extended to Monday, August 23, 2021.

Ms. Lantau was in a detox facility in Florida from August 10, 2021 August 30, 2021 with no access to phone, computer or mail. Ms. Lantau went to a medical treatment center in Florida on August 31, 2021 where she did have access to phone, computer and mail. The decision had been mailed to Ms. Lantau's address in Davenport, Iowa. Ms. Lantau learned about the decision on, or about September 2, 2021 when someone in Davenport sent her the decision.

Ms. Lantau completed an IWD appeal form on September 2, 2021. Claimant's Exhibit A. Ms. Lantau talked with staff at the medical treatment facility, she called the employer and she called IWD. The IWD representative told Ms. Lantau that she could file an appeal. Ms. Lantau filed an appeal via fax on September 30, 2021. The appeal was received by Iowa Workforce Development on September 30, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Lantau's appeal was not filed on time.

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).

Ms. Lantau did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was

invalid. However, when Ms. Lantau did receive the decision on, or about, September 2, 2021, she did not file an appeal within 10 days. Ms. Lantau's delay in filing her appeal once she knew about the decision on, or about September 2, 2021, 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 in filing her appeal before the deadline. Ms. Lantau's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Lantau's appeal was not filed on time. The August 11, 2021 (reference 02) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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January 5, 2022
Decision Dated and Mailed

dz/mh