

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANICE N ADAMS
Claimant

BRIGHTSTAR CRDM, LLC
Employer

APPEAL 21A-UI-01058-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Shanice N Adams, the claimant/appellant, filed an appeal from the August 4 2020, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 15, 2020. Ms. Adams participated and testified. The employer did not participate. Official notice was taken of the administrative record.

ISSUES:

Did Ms. Adams file her appeal on time?
Is Ms. Adams 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. Adams at the correct address on August 4, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 14, 2020. Ms. Adams moved on August 10 due to the August 8 derecho storm. Ms. Adams did not receive the decision in the mail. Ms. Adams called Iowa Workforce Development in October 2020 to find out whether she was eligible for benefits. The representative told Ms. Adams that she was not found not eligible and told Ms. Adams that she could file an appeal. Ms. Adams filed an appeal but did not get a confirmation number. Ms. Adams called Iowa Workforce Development again. The representative told Ms. Adams that she could file another appeal. Ms. Adams appealed the decision online on December 5, 2020. The appeal was received by Iowa Workforce Development on December 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Adams' 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). 00194 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. Adams did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. However, Ms. Adams learned that she was not eligible for benefits in October 2020. Ms. Adams attempted to file an appeal then but the appeal did not go through. Ms. Adams did not file her appeal until at least a month later.

Mr. Adams' 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. Mr. Adams' appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Adams' appeal was not filed on time. The August 4, 2020, (reference 03) unemployment insurance decision is affirmed.



Daniel Zeno
Administrative Law Judge
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February 25, 2021
Decision Dated and Mailed

dz/mh