

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ALEXANDER L SUTHERS
Claimant

SEDONA STAFFING INC
Employer

APPEAL 23A-UI-04599-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(1)j – Voluntary Quit / Temporary Employment Firm

STATEMENT OF THE CASE:

On April 22, 2023, claimant Alexander L. Suthers filed an appeal from the September 9, 2020 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit his temporarily employment position by failing to report back to the employment firm within three working days of completing his final assignment. The parties were properly notified of the hearing. The hearing was switched from an in-person hearing to a telephone hearing after the claimant gave his consent to this switch. A telephonic hearing was held at 10:00 a.m. on Friday, May 19, 2023. Appeal numbers 23A-UI-04599-LJ-T, 23A-UI-04600-LJ-T, and 23A-UI-04602-LJ-T were heard together and created one record. Claimant Alexander L. Suthers personally participated. Employer Sedona Staffing Inc. participated through Colleen McGuinty and Terri Herrold. No exhibits were received or admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file an appeal? Is there good cause to treat the appeal as timely filed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision finding claimant was not eligible for benefits due to his separation with Sedona Staffing Inc. was mailed to his last known address of record on September 9, 2020. He did receive the decision. Claimant does not know when it arrived or how long it takes mail to reach Lost Nation when sent from 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 September 19, 2020. There is no record of claimant filing an appeal at the time he received the disqualification decision.

Next, the decision finding claimant was overpaid regular state unemployment insurance ("regular UI") benefits in the amount of \$1,187.61 was sent to his address of record in Lost Nation on May 25, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 4, 2021. There is no record of claimant filing an appeal at the time he received the regular UI overpayment decision.

Claimant was no longer living in Lost Nation when the regular UI overpayment decision arrived. He had moved sometime over the in 2020, while he was still receiving benefits. He did not update his address with IWD when he moved because it "spaced his mind." Claimant's former address was still his mother's address; she received the overpayment decision and called to tell him it arrived. He never went to her home to retrieve the decision.

Just over two months later, the decision finding claimant was overpaid Federal Pandemic Unemployment Compensation ("FPUC") benefits in the amount of \$9,600.00 was sent to his address of record in Lost Nation on August 12, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 4, 2021. There is no record of claimant filing an appeal at the time he received the regular UI overpayment decision.

Claimant's mother alerted him to this decision arriving at her home, and he went to her home and retrieved it. He read the decision and was confused by it. He did not read the entire decision and did not see the information about appealing. Therefore, claimant did not appeal the FPUC overpayment decision. Later, in April 2023, claimant received the decision from IWD notifying him that his 2022 Iowa income tax refund was being withheld to offset an established overpayment of unemployment insurance benefits. Claimant promptly appealed that decision on April 25, 2023. That appeal was applied to the tax offset decision and the underlying disqualification and overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

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

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

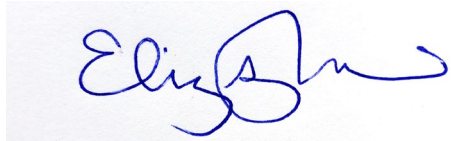
The findings of fact show how I have resolved the disputed factual issues in this case. I assessed claimant's credibility, considering the applicable factors listed above and using my own common sense and experience. I do not find claimant's testimony credible that he filed an appeal prior to April 25, 2023. When claimant called to gather information about how to appeal, he was told that once he filed the appeal online, he would receive an email confirming the appeal was successfully filed. Claimant admits he did not receive this email. He also took no follow-up steps to inquire about the status of the alleged appeal for over two years. The average person who had filed an appeal would certainly inquire after several weeks of silence.

Here, the claimant received the decision at his address of record and, therefore, had an opportunity to file an appeal prior to the appeal deadline. 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 September 9, 2020 (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

May 22, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.