

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTIANE L SODOMIN
Claimant

APPEAL 21A-UI-01055-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/13/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work
Iowa Admin. Code r. 871-24.23(28) – Work Search Warning

STATEMENT OF THE CASE:

Christiane L Sodomini, the claimant/appellant, filed an appeal from the November 17, 2020, (reference 01), unemployment insurance decision that warned her to make at least two work-search contacts per week but did not deny benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on February 18, 2021. Ms. Sodomini registered for the hearing but no hearing was held as there was sufficient information in the appeal letter and administrative record to resolve the matter without testimony.

ISSUE:

Is Ms. Sodomini's appeal filed on time?
Was the work search warning appropriate?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Sodomini at the correct address on November 17, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 27, 2020. Ms. Sodomini did not receive the decision until December 7, 2020. Ms. Sodomini appealed the decision online on December 8, 2020. The appeal was received by Iowa Workforce Development on December 8, 2020.

The administrative law judge further finds: Ms. Sodomini filed a claim for unemployment insurance benefits with an effective date of September 13, 2020, (reference 01). Ms. Sodomini did not make any work-search contacts for the week-ending October 31, 2020 because she had received a job offer to begin work on November 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Sodomín's appeal was 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. Sodomín did not receive the decision in the mail before the appeal deadline and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Sodomín received in the mail on December 7, 2020. She filed her appeal the day after receiving the decision. While Ms. Sodomín's appeal was submitted after the deadline, her delay was due to delay or other action of the United States Postal Service. Thus, Ms. Sodomín's appeal is considered filed on time.

The administrative law judge further concludes that Ms. Sodomini has not made an active and earnest search for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(28) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

Iowa law requires Ms. Sodomini to actively and earnestly search for work each week in order to be eligible for benefits. Ms. Sodomini did not do that for the week-ending October 31, 2020. Therefore, the warning was appropriate.

DECISION:

The November 17, 2020, (reference 01) unemployment insurance decision is affirmed. Ms. Sodomini did not make an active and earnest search for work for the week-ending October 31, 2020. Therefore, the warning was appropriate.



Daniel Zeno
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February 26, 2021
Decision Dated and Mailed

dz/mh