

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANCY L JACOBY
Claimant

CEDAR RAPIDS XAVIER HIGH SCHOOL
Employer

APPEAL 21A-UI-16532-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code § 96.4(5) – Reasonable Assurance of Continued Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 17, 2021, claimant Nancy L. Jacoby filed an appeal from the January 14, 2021 (reference 02) unemployment insurance decision that denied benefits based on a determination that she had reasonable assurance of continued employment with Cedar Rapids Xavier High School. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, September 1, 2021. The claimant, Nancy L. Jacoby, participated. Kevin Jacoby and Rep. Dave Jacoby observed the hearing. The employer, Cedar Rapids Xavier High School, participated through witness Marla Tursi, Business Office Coordinator; and hearing representative Paul Jahnke. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant Nancy Jacoby's last known address of record on January 14, 2021. She did receive the decision within ten days, on or about January 16, 2021. 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 January 24, 2021. The appeal was not filed until June 17, 2021, which is after the date noticed on the disqualification decision.

Claimant received several letters from Iowa Workforce Development around the same time, and she believed they all repeated the same information. She does not recall if she realized that any of these letters could result in an overpayment. Claimant remembers contacting the agency to confirm that she still had a fact-finding conference on January 29, but she did not inquire about the decisions she received or whether she needed to appeal them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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).

Here, the claimant received the decision in the mail 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. While the administrative law judge is sympathetic to claimant's confusion after receiving multiple decisions from the agency around the same time, claimant took the initiative to contact the agency about her upcoming fact-finding

call. She had the opportunity to inquire about the decisions she received and how to appeal those decisions, and she did not do that. 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 January 14, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is written over a light blue rectangular background.

Elizabeth A. Johnson
Administrative Law Judge

September 10, 2021
Decision Dated and Mailed

lj/ol