

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NTACONAYIGIZE ALINE

Claimant

APPEAL 22A-UI-04597-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC

Claimant

OC: 12/22/19

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code §96.6(2) – Timely Appeal

STATEMENT OF THE CASE:

Natconayigize Aline, the claimant/appellant, filed an appeal from the August 31, 2020 (reference 04) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits as of June 14, 2020 because Ms. Aline was still employed in her job at her same hours and wages. The parties were properly notified about the hearing. A telephone hearing was held on April 7, 2022. Ms. Aline participated personally through a CTS Language Link Kirundi interpreter. Nicky Siancine, Ms. Aline's daughter participated in the hearing in favor of Ms. Aline. The employer participated through Molly Riley, human resources. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Aline's appeal filed on time?
Is Ms. Aline able to and available for work?
Is Ms. Aline temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Aline at the correct address on August 31, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 10, 2020.

Ms. Aline received the decision in the mail, but she was confused. Ms. Aline was confused, in part, because of the language barrier. Ms. Aline was also confused because she thought the employer was supposed to pay for the benefits. Ms. Aline did not contact IWD, or the employer and she did not file an appeal at that time.

On April 7, 2021, the address on Ms. Aline's UI account was changed from her Des Moines, Iowa address to an address in Stephens City, Virginia. Ms. Aline has never lived in Virginia, and she did not change the address on her account.

On May 12, 2021, IWD issued an additional decision, (reference 05), finding Ms. Aline was overpaid REGULAR (state) UI benefits. That decision was mailed to Ms. Aline's address of record, which was the Stephens City, Virginia address. On July 28, 2021, IWD issued two additional decisions finding Ms. Aline was overpaid Federal Pandemic Unemployment Compensation (reference 06), and Lost Wage Assistance Payment (LWAP) benefits (reference 07). Both of those decisions were mailed to the Ms. Aline's address of record, which was the Stephens City, Virginia address. Ms. Aline did not receive those decisions.

On February 17, 2022, IWD issued another decision notifying Ms. Aline that IWD was withholding her 2021 Iowa income tax refund to apply to an overpayment of UI benefits that she owes to IWD. Ms. Aline had filed an appeal on via fax on February 14, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on February 14, 2022. IWD set up appeals for the reference 04 decision that denied UI benefits, the three overpayment decisions, and the income tax refund withholding decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Aline's appeal of the reference 04 decision that denied UI benefits 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. Aline received the reference 04 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Aline's delay in filing her appeal 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. Aline's appeal of the reference 04 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Aline's appeal of the reference 04 decision was not filed on time. The August 31, 2020, (reference 04) decision is AFFIRMED.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 12, 2022
Decision Dated and Mailed

dz/mh

NOTE TO MS. ALINE:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
 - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
 - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last two sentences in that section.
 - The PUA application link is at the end of the second-to-last sentence of the section.
 - The reference number/authorization number is the pin number you used for the appeal hearing: 104597.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Iowa Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**