

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA K GLEW

Claimant

APPEAL 20A-UI-05331-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OELWEIN COMMUNITY SCHOOL DISTRICT

Employer

OC: 03/22/20

Claimant: Respondent (1)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Employer filed an appeal from the May 19, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2020, at 1:00 p.m. Claimant participated with her attorney, Nathan Lein. Employer participated through Michael Rueber, Business Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is eligible to receive partial benefits.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant has been overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.
Whether employer filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at the correct address May 19, 2020. Employer received the decision on May 21, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 29, 2020. Employer appealed the decision via facsimile on June 8, 2020. Employer's appeal was received by Iowa Workforce Development on June 8, 2020. Employer did not submit the appeal prior to the due date because the employee responsible for reviewing

and appealing unemployment benefit decisions was only in the office one day per week due to Covid-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal was 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)(c) 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:
 - (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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Employer received the decision eight days prior to the appeal deadline. Any delay by employer in submitting its appeal was due to employer's business practices in light of Covid-19 and not due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Employer's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The May 19, 2020 (reference 01) unemployment insurance decision is affirmed.

A handwritten signature in black ink, appearing to read "Adrienne C. Williamson", is positioned above a horizontal line.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
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July 13, 2020
Decision Dated and Mailed

acw/scn