

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TIMMOTHY S BEAR**  
Claimant

**APPEAL 21A-UI-20001-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**T C & B CORPORATE WEARABLES INC**  
Employer

**OC: 03/14/21  
Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal  
Iowa Code § 96.6(3) – Appeals  
Iowa Admin. Code r. 871-24.28(6) – Prior Adjudication

**STATEMENT OF THE CASE:**

Timothy S Bear, the claimant/appellant, filed an appeal from the August 24, 2021, (reference 01) unemployment insurance (UI) decision that denied REGULAR UI benefits based on a determination in a prior benefit year about Mr. Bear's separation from employment with this employer. The parties were properly notified of the hearing. A telephone hearing was held on November 1, 2021. Mr. Bear participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Bear's appeal filed on time?  
Was the issue of Mr. Bear's separation from employment with this employer adjudicated in a prior claim year?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Bear at the correct address on August 24, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 3, 2021.

Mr. Bear received the decision in the mail. He was confused since he had filed his initial application in March 2021. Mr. Bear tried to file an appeal online, but was unsuccessful. Mr. Bear called IWD. The wait times on the customer service lines were long and Mr. Bear had other things to do, as well. Mr. Bear disconnected the calls before he could speak with a representative.

IWD issued two additional decisions finding Mr. Bear was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Mr. Bear received the

decisions. Mr. Bear filed an appeal online on September 9, 2021. The appeal was received by Iowa Workforce Development on September 9, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Bear's appeal 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).

Mr. Bear received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Bear's delay in filing his 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 his appeal before the deadline. Mr. Bear's appeal

was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

Even though Mr. Bear is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

**DECISION:**

Mr. Bear's appeal was not filed on time. The August 24, 2021 (reference 01) decision is affirmed.



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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

November 19, 2021  
Decision Dated and Mailed

dz/scn

**NOTE TO MR. BEAR:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and 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.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **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.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on March 14, 2021.