

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KPABOU WADJA
Claimant

APPEAL 21A-UI-24285-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 11/24/19
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) - Eligibility - A&A - Able to, Available for Work
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of Absence

STATEMENT OF THE CASE:

On November 2, 2021, claimant, Kpabou Wadja, filed an appeal from the October 21, 2020 (reference 02) unemployment insurance decision that determined claimant requested and was granted a leave of absence making claimant voluntarily unemployed and not available for work, with benefits denied as of May 24, 2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 29, 2021 at 8:00 AM and the hearings were consolidated. Claimant participated. The employer, Whirlpool Corporation, failed to call the toll-free number listed on the hearing notice at the time of the hearing and did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is the Appeal Timely?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated November 2, 2021 and to be timely, needed to be filed on or before October 31, 2020. The decision was mailed to claimant's last known addresses, which is the same address he currently uses. Claimant timely received the decision denying benefits, but decided not to appeal. Claimant only decided to appeal, when he received the overpayment decisions in the other two consolidated cases. Those decisions are dated August 25, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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).

Appellant'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. The decision was timely received at claimant's last known address. The appeal was not timely submitted. Claimant originally decided not to appeal, and only appealed when the overpayment decisions happened in August 2021. A good cause reason for the delay has not been established. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The October 21, 2020 (reference 02) unemployment insurance decision denying benefits as of May 24, 2020 remains in effect, as the appellant is in default and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

January 26, 2022
Decision Dated and Mailed

dh/mh