

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YAR KOE
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-09516-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/26/20
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
PL 116-136, 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 July 1, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 25, 2020, at 11:00 a.m. Claimant did not participate. Employer was not available at the telephone number registered for the hearing. Vonnie Smith, an Unemployment Determination Specialist with TALX UCM Services, was a witness for employer on the issue of timeliness of appeal. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether 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 is 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's agent at the correct address on July 1, 2020. Employer's agent received the decision on July 9, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 11, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. July 11, 2020 was a Saturday. Therefore,

the appeal deadline was extended to Monday, July 13, 2020. Employer appealed the decision via facsimile on August 6, 2020. The appeal was received by Iowa Workforce Development on August 6, 2020. Employer's delay in submitting its appeal was due to its agent's work volume as a result of Covid-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that 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) 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).

Employer's agent received the decision prior to the appeal deadline but did not submit its appeal for over three weeks. Employer's delay in submitting its appeal was 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 July 1, 2020 (reference 01) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.



Adrienne C. Williamson
Administrative Law Judge
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September 29, 2020
Decision Dated and Mailed

acw/sam