

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYNEE S JOYNES
Claimant

IOWA REALTY CO INC
Employer

APPEAL 21A-UI-18689-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)A – Work Refusal
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On August 25, 2021, claimant Jaynee S. Joynes filed an appeal from the June 11, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant refused recall to work on June 8, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Monday, October 18, 2021. Appeal numbers 21A-UI-18689-LJ-T, 21A-UI-18691-LJ-T, and 21A-UI-18693-LJ-T were heard together and created one record. The claimant, Jaynee S. Joynes, participated. The employer, Iowa Realty Company, Inc., participated through Lori Hodges, Director of Human Resources. Claimant's Exhibit A was received and admitted into the record without objection. Department Exhibit D-1 (Ands 4.12.20 ref 01) and Department Exhibit D-2 (Ands 6.13.21 ref 02) were both marked as exhibits during the hearing, for purposes of clarifying and developing the record on the issue of timeliness.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired by employer Iowa Realty Company, Inc., on March 27, 1990. Most recently, claimant worked for the company as a full-time relocation coordinator. Claimant's employment ended on June 8, 2020, when she resigned due to circumstances related to the COVID-19 pandemic.

Claimant had been on a temporary layoff since mid-March 2020. In early June 2020, Hodges reached out to claimant to call her back to work. At that time, claimant's doctor was still concerned about her exposure to the general public. Claimant's underlying health conditions put her at risk for severe outcomes were she exposed to COVID-19, and therefore claimant's doctor instructed her to continue to quarantine and keep herself safe. Claimant responded to the employer that she would not be returning to work. She then sent the employer a resignation

letter stating that continuing to work posed too much risk to her health. Continued work was available, had she not resigned.

A disqualification decision related to claimant's refusal to be recalled to work was mailed to claimant's last known address of record on June 11, 2021. She did receive the decision. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 21, 2021.

A disqualification decision related to claimant's failure to earn eight times her weekly benefit amount after opening her claim effective April 12, 2020, was mailed to claimant's last known address of record on June 23, 2021. She did receive the decision. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 3, 2021.

Claimant acknowledges receiving both of the disqualification decisions and admits she did not take action when she received them. When she initially opened her claim, she spoke to someone at the agency and was told that she should file her weekly claims and the agency would "let her know" when her eligibility expired or her benefits ran out. Claimant believed this would be communicated through the online weekly claims-filing system. Therefore, she did not pay attention to the decisions she received in the mail.

Later, the disqualification decision related to claimant's separation from employment was mailed to claimant's last-known address of record on August 17, 2021. Claimant did receive this decision. The decision mis-stated that claimant separated from her employment in March 2020, when claimant did not actually separate from her employment until June 2020. Claimant promptly called the agency and then filed an appeal on August 25, 2021. This appeal was applied to the two prior disqualification decisions as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. The administrative law judge understands that claimant may have been confused by the decision, but she took no action to try and eliminate her confusion. Claimant'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. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The June 11, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge

October 25, 2021
Decision Dated and Mailed

lj/ol