

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY E PECK
Claimant

WAVERLY HEALTH CENTER
Employer

APPEAL 22A-UI-04389-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/02/22
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On February 11, 2022, claimant Mary E. Peck filed an appeal from the January 18, 2022 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was still employed and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, March 22, 2022. The claimant, Mary E. Peck, participated. The employer, Waverly Health Center, participated through Missy Gearhart, HR Specialist. Claimant's Exhibits A and B were received and admitted into the record without objection. Department's Exhibits D-1 and D-2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

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: The decision finding claimant ineligible for benefits was mailed to claimant's last known address of record on January 18, 2022. She did receive the decision within ten days, prior to the deadline to appeal. 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 January 28, 2022. The appeal was not filed until February 11, 2022, which is after the date noticed on the disqualification decision.

Claimant recalled contacting Iowa Workforce Development ("IWD") after attempting to file an online weekly continued claim and discovering that her account had been frozen. At that point, she was advised that she should continue to perform her required job searches each week. Claimant had access to the U.S. mail and could have filed an appeal via mail.

Claimant separated from the employer on January 20, 2022, two days after IWD held a fact-finding interview and issued the decision regarding claimant's employment. IWD has not issued a determination regarding claimant's eligibility for benefits based on a separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 did not find claimant's testimony credible that someone instructed her not to appeal or that the apparent "freeze" on her claim prevented her from filing an online appeal. Claimant's delay in appealing 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.

This matter will be remanded for a determination of whether claimant is eligible for benefits following her separation from the employer.

DECISION:

The January 18, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.

REMAND:

The issue of claimant's eligibility for benefits based on her separation from Waverly Health Center is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and determination with appeal rights.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

March 25, 2022
Decision Dated and Mailed

lj/lj