

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHUNCHENG SHI
Claimant

APPEAL 21A-UI-17907-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/17/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5-10 – Authorization to Work in the United States
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Chuncheng Shi, filed an appeal from the September 24, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on October 8, 2021. The hearing was held together with Appeals 21A-UI-17908-JC-T and 21A-UI-17909-JC-T. The claimant participated personally and through a Mandarin/Chinese interpreter from CTS Language Link. He was represented by Jie Jung. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 (appeal letter) was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

The issues are whether the claimant filed a timely appeal and whether the claimant was legally authorized to work in the United States. .

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established his claim for benefits with an effective date of May 17, 2020. On September 8, 2020, claimant was mailed a letter from IWD that asked claimant to provide evidence proving authorization to work in the United States by September 18, 2020. The letter directed him to present both front and back sides of his work authorization card. Claimant did not receive the letter. Claimant has been authorized to work in the United States since 2018. With his appeal letter, he provided documentation in support of his work authorization (Department Exhibit 1).

An initial decision (reference 01) was mailed to the claimant/appellant’s address of record on September 24, 2020. The decision contained a warning that an appeal must be filed by October 4, 2020. The decision also directed the appellant to call the customer service line for assistance. Claimant has limited English proficiency and does not read or write English. Claimant does not have anyone in his home that can translate documents for him.

Claimant/appellant filed the appeal on August 9, 2021 after receiving overpayment decisions (See Department Exhibit 1). The claimant's appeal was filed by mail and with assistance from Ms. Jung. The appeal was delayed because of claimant's limited English proficiency.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

Claimant's appeal was delayed due to a language barrier and is accepted as timely. In the future, claimant is reminded he may call or visit his local IWD office for assistance, and a translator/interpreter can be provided to help answer questions.

For the reasons that follow, the administrative law judge concludes the claimant is available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5(10) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

A claimant is considered to be available for work when proof of citizenship or work registration is provided. The claimant has not complied and provided evidence which would support a finding of authorization to work in the United States. Claimant must furnish both sides of his work authorization card for verification. Claimant did not receive the initial notice directing him to provide his work authorization card and has presented sufficient evidence at the hearing that he had legal authorization to work. Therefore, the initial decision that denied benefits to claimant is reversed, as he has established his ability to work in the United States. Benefits are allowed effective May 17, 2020, provided he is otherwise eligible.

DECISION:

The appeal is timely. The initial decision dated September 24, 2020 (reference 01) is reversed. The claimant has established his ability to work in the United States. Benefits are allowed effective May 17, 2020, provided he is otherwise eligible.



Jennifer L. Beckman
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October 18, 2021
Decision Dated and Mailed

jlb/scn