

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANE A WALLACE

Claimant

AMES COMMUNITY SCHOOL DIST

Claimant

APPEAL 22A-UI-02961-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20

Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Jane A Wallace, the claimant/appellant, filed an appeal from the February 17, 2021 (reference 01) unemployment insurance (UI) decision that denied benefits as of March 29, 2020 because Ms. Wallace was unduly limiting her availability for work. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2022. Ms. Wallace participated personally. The employer participated through Kristin Johnson, director of human resources. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Wallace's appeal filed on time?
Is Ms. Wallace able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Wallace at the correct address on February 17, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 27, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. February 27, 2021 was a Saturday; therefore, the deadline was extended to Monday, March 1, 2021.

IWD also issued a different decision, also dated on February 17, 2021, (reference 03) that denied benefits as of May 31, 2020 because Ms. Wallace was unemployed during academic years or terms. Ms. Wallace received the decisions in the mail. Ms. Wallace contacted IWD, and the representative told her that she could submit a second Pandemic Unemployment Assistance (PUA) application. Ms. Wallace had previously applied for PUA benefits on September 18, 2020. Ms. Wallace applied for PUA benefits on February 19, 2021. On March 2, 2021, IWD found Ms. Wallace eligible for PUA benefits as of March 29, 2020.

IWD issued seven additional decisions finding Ms. Wallace was overpaid REGULAR UI benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, and Lost Wage Assistance Payments (LWAP) benefits. All seven decisions are dated December 21, 2021. Ms. Wallace received those decisions in the mail. Ms. Wallace filed an appeal online on December 22, 2022. The appeal was received by Iowa Workforce Development on December 22, 2021. IWD set up appeals for the reference 01 and reference 03 decisions and the seven overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Wallace's appeal of the reference 01 decision was not filed on time.

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).

Ms. Wallace received the reference 01 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Wallace's delay in filing his appeal 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 in filing her appeal before the deadline. Ms. Wallace's appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Wallace's appeal of the reference 01 decision was not filed on time. The February 17, 2021, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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March 17, 2022
Decision Dated and Mailed

dz/mh