

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MICHELLE A CHODA

Claimant

and

CURTIS DIEKEVERS

Employer

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HEARING NUMBER: 21B-UI-10162

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.6-2

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

After a complete review of this claim with audio testimony, I respectfully disagree with the majority decision regarding the timeliness of appeal from the Fact-Finding decision.

The disqualifying Fact-Finding decision was mailed on December 17, 2020, to the Claimant at her home address in Altoona, Iowa, and to the Employer in West Des Moines, Iowa. The decision clearly indicated that the parties had ten days from the date of mailing to file an appeal. In this matter, the deadline to file an appeal was December 28, 2020, as the 10th day was on a Sunday. The Employer, in sworn testimony, confirmed that the decision had reached the Employer's address within a "few days" of the mailing date.

The Claimant denied receiving the decision and thus didn't respond to the deadline to file an appeal. The Claimant waited until April 05, 2021, to contact Iowa Workforce Development and then was informed that the decision had been sent almost 4 months prior. The Administrative Law Judge, in his decision, then lays the unsubstantiated blame upon the United States Postal Service. Furthermore, the Administrative Law Judge's decision reasoned that "the weight of the evidence establishes that the Claimant did not receive the December 17, 2020, ... decision." However, there is no substantive evidence to weigh, only the weak, self-serving excuse provided by the Claimant.

It is my opinion that the Claimant's explanation for failure to timely appeal the decision lacks credibility, and the decision issued by the Administrative Law Judge should be reversed.

Myron R. Linn

AMG/fnv