

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANNER M BOLLINGER
Claimant

APPEAL 22A-UI-05905-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/04/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing
Iowa Code § 96.4(3) – Eligibility – Able to, available for, work search
Iowa Admin. Code r. 871-24.2(1)e – Eligibility – A&A – Failure to report
Iowa Admin. Code r. 871-24.23(11) – Eligibility – A&A – Failure to report

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 28, 2021 (reference 04) unemployment insurance decision that denied benefits effective July 18, 2021 finding claimant failed to report to Iowa Workforce Development (IWD) for reemployment services on July 21, 2021. The parties were properly notified of the hearing. A telephone hearing was held on April 18, 2022. Claimant participated. IWD participated through Amy Bebout, RESEA Career Planner. Department's Exhibits 1 – 3 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant is able to and available for work.
Whether claimant failed to report as directed by a department representative.
Whether claimant participated in the reemployment services class.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the correct address of record on July 28, 2021. Claimant was no longer living at the address of record and did not update his address with IWD. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 7, 2021. Claimant appealed the decision online on March 7, 2022. Iowa Workforce Development (IWD) received the appeal on March 7, 2022.

Claimant filed weekly claims for the two weeks between July 25, 2021 and August 7, 2021 and received no benefits due to this disqualifying decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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).

Claimant did not appeal the decision until after the deadline. Claimant’s delay was not due to agency error or misinformation or delay of the United States Postal Service. Claimant’s delay was due to his decision not to update his mailing address with IWD. While claimant did not receive the decision in a timely manner, he had notice of the disqualifying decision when he received no benefit payments from his weekly claims between July 25, 2021 and August 7, 2021. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The July 28, 2021 (reference 04) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
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April 25, 2022
Decision Dated and Mailed

acw/ACW