

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHAD A BRIMEYER**  
Claimant

**APPEAL 21A-UI-23219-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLAGGER PROS USA, LLC**  
Employer

**OC: 01/03/21  
Claimant: Appellant (6)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for misconduct  
Iowa Code § 96.4(3) - A&A - Able to, Available for Work  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant/appellant, Chad Brimeyer, filed an appeal on October 19, 2021, from the September 15, 2021, (reference 04) unemployment insurance decision that concluded claimant was eligible for unemployment insurance benefits due to a July 21, 2021 voluntary quit. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 10, 2021. Claimant participated. The employer, Flagger Pros USA, LLC, failed to call into the hearing and did not participate. Judicial notice was taken of the administrative file.

**ISSUE:**

Is claimant's appeal timely?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds the unemployment insurance decision was mailed to the appellant's address of record on September 15, 2021. September 25, 2020 is the appeal deadline. The appeal was filed October 19, 2021. Appellant admitted the appeal was timely received at his address of record, but due to him moving, he did not get back to his old address to collect mail until later, and then he thought he had filed, but realized he had not, so when he filed it was untimely.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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).

Appellant timely received the decision in the mail and therefore had an opportunity to file an appeal prior to the appeal deadline. Appellant's delay 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.

**DECISION:**

The September 15, 2021, (reference 04 unemployment insurance decision is **AFFIRMED**. The appeal in this case was not timely, and the decision of the representative remains in effect.



Darrin T. Hamilton  
Administrative Law Judge

January 12, 2022  
Decision Dated and Mailed

dh/rs

*Note to Claimant:*

Claimant confirmed the address at the start of the hearing but later testified he had moved. Claimant did not provide an updated address, but stated he would update his address with IWD. Claimant is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems.