

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHERINE A BERNS
Claimant

RIVER LIVING CENTER INC
Employer

APPEAL 21A-UI-14782-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Katherine A Berns, the claimant/appellant, filed an appeal from the July 9, 2020, (reference 01) unemployment insurance decision that denied REGULAR unemployment insurance benefits. Iowa Workforce Development mailed a notice of hearing to the parties' last known addresses of record. A telephone hearing was held on August 24, 2021. Ms. Berns participated and testified. Nancy McClellan participated as Ms. Berns' authorized representative. The employer participated through Mary Eulberg. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Berns' appeal filed on time?
Is Ms. Berns partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Berns at the correct address on July 9, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by July 19, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. July 19, 2020 was a Sunday; therefore, the deadline was extended to Monday, July 20, 2020.

Ms. Berns received the decision in the mail before the deadline. She attempted to fax an appeal to IWD on July 14, 2020. IWD did not receive the appeal. Ms. Berns has no confirmation that the fax was successfully sent.

IWD issued a different decision, dated June 3, 2021, finding Ms. Berns was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Berns filed an appeal on June 11, 2021. The appeal was received by Iowa Workforce Development on June 11, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Ms. Berns' appeal 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. Berns received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Berns' June 11, 2021 appeal was filed after the July 20, 2020 appeal deadline for the July 9, 2020 decision. Ms. Berns' delay in filing her appeal before the deadline 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. Berns' appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Berns' appeal was not filed on time. The July 9, 2020, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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August 27, 2021
Decision Dated and Mailed

dz/kmj