

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANAE L RATHMAN
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-19454-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On September 1, 2021, claimant Janae L. Rathman filed an appeal from the October 1, 2020 (reference 01) unemployment insurance decision that determined claimant was still employed at her same hours and wages and was not eligible for benefits effective May 17, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Wednesday, October 27, 2021. Appeal numbers 21A-UI-19454-LJ-T, 21A-UI-19455-LJ-T, 21A-UI-19456-LJ-T, and 21A-UI-19458-LJ-T were heard together and created one record. The claimant, Janae L. Rathman, participated. The employer, ABCM Corporation, participated through Krystal Thoe, Administrator; and Stephanie Gilbertson, Human Resource Coordinator. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on October 1, 2020. She did not receive the decision, as she was not living at her address of record at the time. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 11, 2020. The appeal was not filed until September 1, 2021, which is after the date noticed on the disqualification decision.

All documents sent to claimant pertaining to her claim have been sent to the same, initial address of record in Hampton. Claimant moved from her initial address of record to a new address in Hampton in June 2020. Claimant thought she updated her address with the agency, but the agency has no record of claimant's new address. Claimant later moved from Hampton

to Mason City. Claimant admits she did not update her address with the agency related to this move.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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.

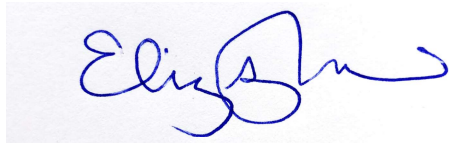
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Here, the agency mailed claimant a disqualification decision to her last-known address. At that point, the ten-day clock for filing an appeal began to run. Claimant'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

delay in filing the appeal was because she did not properly update her address with the agency. As claimant moved in June 2020, while she was still actively filing for unemployment insurance benefits, she knew or should have known the agency might be sending her correspondence and therefore she would need to maintain an updated address with the agency. 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 October 1, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

November 9, 2021
Decision Dated and Mailed

lj/kmj