

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA C FOLEY
Claimant

TUCKER LAW OFFICE
Claimant

APPEAL 22A-UI-07079-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

Amanda C Foley, the claimant/appellant, filed an appeal from the December 14, 2020 (reference 01) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits as of March 29, 2020 because Ms. Foley was still employed in her job with this employer for the same hours and wage as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2022. Ms. Foley participated personally. The employer participated through Erin Tucker. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Foley's appeal filed on time?
Is Ms. Foley able to and available for work?
Is Ms. Foley temporarily or partially unemployed?
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. Foley at the correct address on December 14, 2020. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by December 24, 2020.

Ms. Foley received the UI decision in the mail. Ms. Foley had filed an initial claim for REGULAR (state) UI benefits on March 29, 2020. Ms. Foley had also applied for Pandemic Unemployment Assistance (PUA) benefits on April 9, 2020 because she is also self-employed. Soon thereafter an IWD representative contacted Ms. Foley and asked her to verify her self-employment. Ms.

Foley submitted financial documents showing that she is self-employed. Ms. Foley then began receiving UI benefits. Ms. Foley assumed that she was receiving PUA benefits. Ms. Foley also assumed that the reason she was receiving PUA benefits was because she had proven that she was self-employed, and her business was negatively impacted by the COVID-19 pandemic. Ms. Foley was not receiving PUA benefits; she was receiving REGULAR (state) UI benefits. Because Ms. Foley assumed she was eligible for PUA benefits and receiving PUA benefits, she expected that IWD would tell her that she was not eligible for REGULAR (state) UI benefits. Ms. Foley did not disagree with the UI decision that denied REGULAR (state) UI benefits because her job with this employer had not changed. Ms. Foley did not appeal the December 14, 2020 (reference 01) UI decision.

Ms. Foley applied for PUA benefits again on March 9, 2021. On March 15, 2021, IWD issued a decision denying Ms. Foley PUA benefits. The decision listed April 9, 2020 as the "Date Filed." Ms. Foley assumed that the PUA denial decision was about her March 9, 2021 PUA application, and not about her April 9, 2020 PUA application. Ms. Foley did not appeal the March 15, 2021 PUA decision.

Ms. Foley's initial claim year ended in late March 2021, and she filed a new initial claim effective March 28, 2021. IWD issued a June 9, 2021 (reference 01) UI decision in Ms. Foley's new claim year that denied REGULAR (state) UI benefits as of March 28, 2021 because she was still employed in her job with this employer for the same hours and wage as in her original contract of hire. Ms. Foley expected that IWD would tell her that she was not eligible for REGULAR (state) UI benefits because her job with this employer had not changed. Ms. Foley did not appeal the June 9, 2021 (reference 01) UI decision.

IWD issued four additional UI decisions on March 18, 2022 finding Ms. Foley was overpaid REGULAR (state) UI benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wage Assistance Payment (LWAP) benefits. Ms. Foley received those decisions in the mail. Ms. Foley filed an appeal online on March 23, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 23, 2022. IWD set up appeals for the four overpayment UI decisions, the December 14, 2020, (reference 01) UI decision, and the June 9, 2021 (reference 01) UI decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Foley's appeal of the December 14, 2020 (reference 01) UI decision 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:

2. 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:

(2) 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. Foley received the December 24, 2020, (reference 01) UI decision before the deadline and, therefore, could have filed an appeal on the appeal deadline. The notice provision of the decision was valid. Ms. Foley's delay in filing her appeal 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 his appeal. Ms. Foley's appeal of the reference 01 UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Foley's appeal of the December 14, 2020, (reference 01) UI decision was not filed on time.
The December 14, 2020, (reference 01) UI decision is AFFIRMED.



Daniel Zeno
Administrative Law Judge
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May 25, 2022
Decision Dated and Mailed

dz/kmj