

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISETTE G ORTIZ-THOMAS
Claimant

APPEAL 21A-UI-16605-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Lisette G Ortiz-Thomas, the claimant/appellant, filed an appeal from the July 8, 2021, (reference 03) unemployment insurance decision that concluded she was overpaid REGULAR unemployment insurance (UI) benefits in the amount of \$1,195.00. Ms. Ortiz-Thomas was properly notified of the hearing. A telephone hearing was held on September 21, 2021. Ms. Ortiz-Thomas participated and testified. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Ortiz-Thomas' appeal filed on time?
Has Ms. Ortiz-Thomas been overpaid REGULAR UI benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Ortiz-Thomas at the correct address on July 8, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by July 18, 2021.

In June 2020, Ms. Ortiz-Thomas gave IWD an updated address. The address was to her parent's house. Ms. Ortiz-Thomas would occasionally check in with her parents about her mail, and her parents would give her mail sent to their address at various times. Sometimes, Ms. Ortiz-Thomas' parents would throw away mail sent to their address for her. Ms. Ortiz-Thomas' parents gave her the July 8 decision on, or about, July 26, 2021 at a family gathering. Ms. Ortiz-Thomas filed an appeal online on July 27, 2021. The appeal was received by Iowa Workforce Development on July 27, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Ms. Ortiz-Thomas' appeal of the July 8, 2021 (reference 03) 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:

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. Ortiz-Thomas received the decision in the mail at her parents address before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Ortiz-Thomas' delay in filing her appeal of the reference 03 decision 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. Ortiz-Thomas' appeal of the reference 03 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Ortiz-Thomas' appeal was not filed on time. The July 8, 2021, (reference 03) decision is affirmed.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

September 24, 2021
Decision Dated and Mailed

dz/mh