

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE A HANKS

Claimant

APPEAL 21A-UI-17368-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST

Employer

OC: 05/31/20

Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Janice A Hanks, the claimant/appellant, filed an appeal from the September 16, 2020, (reference 01) unemployment insurance (UI) decision that denied benefits. Ms. Hanks was properly notified of the hearing. A telephone hearing was held on October 1, 2021. Ms. Hanks participated and testified. The employer participated through Benjamin Happel, human resources. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Ms. Hanks' appeal filed on time?
Is Ms. Hanks able to and available for work?
Is Ms. Hanks temporarily or partially unemployed?
If so, is the employer's account subject to charge?
Does Ms. Hanks have reasonable assurance of continued employment in the next school term or year?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Hanks at the correct address on September 16, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 26, 2020.

Ms. Hanks received the decision in the mail. Ms. Hanks called IWD, and the representative told her about (federal) Pandemic Unemployment Assistance (PUA) benefits. She applied for PUA benefits on September 18, 2020, and again on September 30, 2020. The IWD decision dated, September 25, 2020 concluded that Ms. Hanks is eligible for PUA benefits from May 31, 2020 through August 22, 2020.

IWD issued three additional decisions finding Ms. Hanks was overpaid REGULAR unemployment insurance benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wage Assistance Payments (LWAP) benefits. All three decisions were dated July 30, 2021. Ms. Hanks received those decisions in the mail. Ms. Hanks filed an appeal online on August 3, 2021. The appeal was received by Iowa Workforce Development on August 3, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Ms. Hank's appeal of the September 16, 2020, (reference 01) 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. Hanks 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. Hanks' 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 her appeal before the deadline. Ms. Hanks' appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Hanks' appeal of the September 16, 2020, (reference 01) decision was not filed on time. The September 16, 2020, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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October 5, 2021
Decision Dated and Mailed

dz/kmj