

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARLINGTON S DOLOPEI
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-24530-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Appellant (1R)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Darlington S Dolopei, the claimant/appellant, filed an appeal from the July 15, 2021, (reference 03) unemployment insurance (UI) decision that denied REGULAR UI benefits as of March 21, 2021 because he was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2022. Mr. Dolopei participated and testified. The employer participated did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Dolopei's appeal filed on time?
Is Mr. Dolopei able to and available for work?
Is Mr. Dolopei on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Dolopei at the correct address on July 15, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by July 25, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. July 25, 2021 was a Sunday; therefore, the deadline was extended to Monday, July 26, 2021.

Mr. Dolopei had moved in May 2021. He updated his address with the U.S. Postal Services, but he did not update his address with IWD. Mr. Dolopei had been filing weekly claims as of March 21, 2021. He continued to file weekly claims through June 26, 2021.

IWD issued two additional decisions finding Mr. Dolopei was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Mr. Dolopei received a billing notice from IWD in November 2021 telling he was overpaid benefits. Mr. Dolopei immediately went to the IWD office where the representative told him he could file an appeal.

Mr. Dolopei filed an appeal via email on November 1, 2021. The appeal was received by Iowa Workforce Development on November 1, 2021. IWD set up appeals for the two overpayment decisions and the reference 03 decision.

Mr. Dolopei applied for Pandemic Unemployment Assistance (PUA) benefits on April 10, 2020. IWD has not issued a decision on his application.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Dolopei's appeal of the 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).

Mr. Dolopei moved and continued to file weekly claims, but he did not tell IWD his new address. Mr. Dolopei's delay in filing his 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 before the deadline. Mr. Dolopei's appeal of the reference 03 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Dolopei's appeal of the reference 03 decision was not filed on time. The July 15, 2021 (reference 03) decision is affirmed.

REMAND:

This matter is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision on Mr. Dolopei's PUA application.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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January 27, 2022
Decision Dated and Mailed

dz/mh