

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACALYN K SCHEPF
Claimant

APPEAL 21A-UI-23663-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/12/20
Claimant: Appellant (6)**

Iowa Code § 96.4(3) - A&A - Able to, Available for Work
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant/appellant, Jacalyn Schnepf, filed an appeal on October 22, 2021, from the December 17, 2020, (reference 02) unemployment insurance decision that concluded claimant was not eligible for unemployment insurance benefits from 10/04/20 – 10/24/20 as records indicate claimant was ill the major portion of the work week and therefore did not meet the able and available requirements of the law. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 16, 2021 at 8:00 AM. The hearings were consolidated. Claimant participated. The department did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is claimant's appeal timely?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The unemployment insurance decision was mailed to the appellant's address of record on December 17, 2020. December 27, 2020 is the appeal deadline. The appeal was filed October 22, 2021. Appellant does not recall this specific decision, but does recall getting a decision, as she investigated what she should do, including communicating with an IWD representative. Claimant is not aware of any issues involving the timely delivery of her mail. Claimant timely received the decision. The decision sets forth the appeal deadline, ways an appeal can be sent and how/where to submit an appeal. Claimant used too much time to determine whether to appeal, and only did so when she received the decision that found an overpayment.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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).

Appellant timely received the decision in the mail and therefore had an opportunity to file an appeal prior to the appeal deadline. Appellant'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. Sending an e-mail for information in January, past the deadline, and waiting for a response, is not good cause. No other good cause reason has been established for the delay. 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 December 17, 2020, (reference 02) unemployment insurance decision denying benefits from 10/04/20 – 10/24/20 remains in effect as the appeal in this case was not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

January 20, 2022
Decision Dated and Mailed

dh/mh