

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REGAN BRISKER
Claimant

IOWA CITY COFFEE COMPANY
Employer

APPEAL 21A-UI-21255-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

Regan Brisker, the claimant/appellant, filed an appeal from the November 5, 2020, (reference 01) unemployment insurance (UI) decision that denied benefits as of May 10, 2020. The parties were properly notified of the hearing. A telephone hearing was held on November 19, 2021. Ms. Brisker participated and testified. The employer participated through Tara Cronbaugh. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Brisker's appeal filed on time?
Is Ms. Brisker able to and available for work?
Is Ms. Brisker 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. Brisker at the correct address on November 5, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by November 15, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. November 15, 2020 was a Sunday; therefore, the deadline was extended to Monday, November 16, 2020.

Ms. Brisker received the decision in the mail. Ms. Brisker did not know what to do with the decision so she did not file an appeal. IWD issued two additional decisions finding Ms. Brisker was overpaid REGULAR UI benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Brisker received at least one of those decisions. Ms. Brisker filed an

appeal online on September 17, 2021. The appeal was received by Iowa Workforce Development on September 17, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Brisker's appeal of the 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. Brisker 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. Brisker'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 her appeal before the deadline. Ms.

Brisker's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Brisker's appeal of the reference 01 decision was not filed on time. The November 5, 2020 (reference 01) 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

December 29, 2021
Decision Dated and Mailed

dz/scn

NOTE TO MS. BRISKER:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on March 22, 2020.