

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA L GUSTAFSON
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL 21A-UI-11826-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 10, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 16, 2021, at 1:00 p.m. Claimant participated. Employer participated through Lindsay Fett, Human Resources Director. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is 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 claimant at the address of record on August 10, 2020. Claimant did not receive the decision. Claimant was not living at her address of record at the time of mailing; claimant had moved and did not update her address with Iowa Workforce Development. When claimant moved, she had her mail forwarded from the address of record to a post office box by the United States Postal Service. Claimant did not check her mail at the post office box regularly.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 20, 2020. Claimant appealed the decision via mail on April 12, 2021 after receiving an overpayment decision that was issued on March 30, 2021. Claimant's appeal was received by Iowa Workforce Development on April 19, 2021.

Claimant filed an initial claim for benefits effective April 19, 2020. Claimant filed ongoing weekly claims from April 19, 2020 through August 8, 2020. Claimant did not receive benefits for the week ending August 8, 2020 (due to the disqualifying decision issued August 10, 2020). When claimant failed to receive benefits for the week ending August 8, 2020, she did not contact Iowa Workforce Development to inquire about the status of her eligibility; instead, claimant assumed that the benefit program had expired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was untimely.

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). The question in this case thus becomes whether the appellant was deprived of a

reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not appeal the decision prior to the appeal deadline. Claimant's delay was not due to agency error or misinformation or delay of the United States Postal Service. Claimant's delay was due to her decision not to update her mailing address with Iowa Workforce Development and not regularly check her mail after having it forwarded to a post office box. Furthermore, claimant had notice of the disqualifying decision when she did not receive benefits for the week ending August 8, 2020. Claimant did not inquire of Iowa Workforce Development or file an appeal for eight months. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The August 10, 2020 (reference 02) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
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July 27, 2021
Decision Dated and Mailed

acw/ol