

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**REGINA M BLANTON**

Claimant

**APPEAL 21A-UI-09087-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAPETREE MEDICAL STAFFING INC**

Employer

**OC: 01/10/21**

**Claimant: Appellant (1)**

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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 February 16, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 16, 2021, at 10:00 a.m. Claimant participated. Employer participated through Zachary Myer, Human Resources Specialist. 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 (reference 02) was mailed to claimant at the correct address on February 16, 2021. Claimant received the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 26, 2021. Claimant did not appeal the decision (reference 02). On March 31, 2021, claimant appealed a different decision (reference 01) that denied benefits based upon her separation from employment with Aldi. Iowa Workforce Development received claimant's appeal on March 31, 2021 and applied it to all adverse decisions including this decision (reference 02).

Claimant did not appeal this decision (reference 02), because she did not know that it was necessary. Claimant filed for benefits when her employment with Aldi ended and believed that she only had to appeal the decision (reference 01) that denied benefits based upon that separation.

### **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).

Claimant received the decision but did not appeal it. Claimant's failure to appeal the decision was due to her mistaken belief that it was not necessary to appeal the denial decision (reference 02) with Grapetree Medical Staffing. Claimant's failure to file an appeal was not due

to agency error or misinformation or delay by the United States Postal Service. Claimant did not file a timely appeal. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The February 16, 2021 (reference 02) unemployment insurance decision is affirmed.



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Adrienne C. Williamson  
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June 30, 2021  
Decision Dated and Mailed

acw/mh