

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERESA SOLIS MORALES
Claimant

APPEAL NO. 21A-UI-22599-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/10/21
Claimant: Appellant (1)**

Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 12, 2021, the claimant Teresa Solis Morales appealed the September 17, 2021, (reference 06) decision that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation (“FPUC”) benefits in the amount of \$3,900.00 for the thirteen-week period ending April 10, 2021. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, December 6, 2021. Appeal numbers 21A-UI-22596-LJ-T, 21A-UI-22598-LJ-T, and 21A-UI-22599-LJ-T were heard together and created one record. The claimant, Teresa Solis Morales, participated. Spanish/English interpretation services were provided by CTS Language Link. Claimant’s Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision finding claimant overpaid FPUC benefits was mailed to claimant’s last known address of record in Marshalltown on September 17, 2021. She did receive the decision sometime in September 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 27, 2021. The appeal was not filed until October 12, 2021, which is after the date noticed on the disqualification decision.

Claimant received two companion overpayment decisions at the same time. Claimant explained that when she initially received the decisions, she called the agency and made arrangements to repay her overpayments. Claimant’s first payment was scheduled for early October. However, she also knew she had the option to appeal. She was unsure about whether she wanted to appeal, and then her husband got sick, which caused her to change her mind and pursue the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file her appeal in a timely manner. Benefits are withheld.

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.

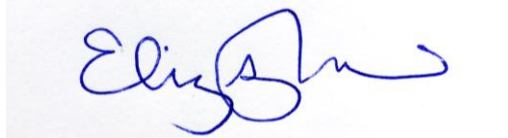
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant'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. 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 September 17, 2021 (reference 06) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 14, 2021
Decision Dated and Mailed

lj/lj