

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERI A OTTOWAY

Claimant

APPEAL 21A-UI-01145-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN COUNTY EYE CARE PLC

Employer

OC: 04/12/20

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Linn County Eye Care PLC, the employer/appellant, filed an appeal from the November 17, 2020, (reference 02) unemployment insurance decision that concluded Ms. Ottoway was eligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2020. The employer participated through Sara Wiest. Ms. Ottoway participated. Official notice was taken of the administrative record.

ISSUES:

Did the employer file its appeal on time?
Is Ms. Ottoway able to and available for work?
Is Ms. Ottoway still employed at the same hours and wages?
Is Ms. Ottoway overpaid benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to the employer at the correct address on November 17, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 17, 2020. The employer received the decision before the deadline. The employer initially did not understand that its account was being charged. The employer contacted Iowa Workforce Development on December 7, 2020 and the representative told the employer that it could file an appeal. The employer appealed the decision online on December 7, 2020. The appeal was received by Iowa Workforce Development on December 7, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer's appeal 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).

The employer received the decision in the mail and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. The employer's delay was not due its own lack of understanding about what the decision meant. The employer'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. The employer's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

The employer's appeal was not filed on time. The November 17, 2020, (reference 02) unemployment insurance decision is affirmed.



Daniel Zeno
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February 26, 2021
Decision Dated and Mailed

dz/lj