

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODI C FOOS

Claimant

APPEAL 21A-UI-13961-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JULIAN UNLEASHED INCORPORATED

Employer

OC: 05/24/20

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge from Employment

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 10, 2021, claimant Codi C. Foos filed an appeal from the September 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a determination that he was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, August 17, 2021. Appeal numbers 21A-UI-13961-LJ-T and 21A-UI-13962-LJ-T were heard together and created one record. The claimant, Codi C. Foos, participated along with witness Morgan Slama. The employer, Julian Unleashed Incorporated, participated through Leah Whittler, Executive Director. The administrative law judge took official notice of the administrative record and the record of appeals filed with the Appeals Bureau through the online filing system.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on September 22, 2020. Claimant testified that he received the decision in September. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 2, 2020. The appeal was not filed until June 10, 2021, which is after the date noticed on the disqualification decision. Claimant testified that he does not recall exactly when he received the decision, as he has been going through a lot since that time. When he received the decision, he had Slama read it thoroughly. He does remember seeing there was a deadline to file an appeal. Claimant believes that he appealed the decision online in September 2020. However, the agency has no record that claimant filed an appeal at that time. The administrative law judge left the record open until the end of the day on August 17 for the limited purpose of allowing claimant to submit the confirmation email he would have received after he filed his appeal. By

10:00 a.m. on August 18, the Appeals Bureau inbox – uiappealshelp@iwd.iowa.gov – had not received any email from the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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 22, 2020 (reference 01) 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
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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August 23, 2021
Decision Dated and Mailed

lj/scn