

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LILIANA AGUIRRE
Claimant

APPEAL 22A-UI-00861-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/16/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136, Sec. 2107 - Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

On December 13, 2021, claimant, Liliana Aguirre, filed an appeal from the August 25, 2021, (reference 01) unemployment insurance decision that found claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits effective 01/03/21 as you were monetarily eligible for regular unemployment benefits in the state of Texas. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 01, 2022, at 11:00 AM and the cases were consolidated. Claimant participated. The Department did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is claimant's appeal timely?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated December 13, 2021, and to be timely, needed to be filed on or before September 7, 2021. Claimant did not timely receive the decision that was sent to her last known address, in Donna, Texas. Claimant had moved but did not update her address. Claimant received the decision on October 14, 2021. Claimant did not submit her appeal right away and waited to address the appeal. Claimant waited fifty days after receiving the decision to submit her appeal and offered no reasonable explanation for the appeal being past the deadline.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). The record shows that the appellant did not receive the decision within ten days of the mailing date. After she received the decision on October 14, 2021, she took fifty days to file her appeal, on December 3, 2021.

The administrative law judge concludes that her failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

August 25, 2021, (reference 01) unemployment insurance decision that found claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits effective 01/03/21 remains in effect, as the appeal in this case was not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

February 25, 2022
Decision Dated and Mailed

dh/mh