

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OMAR SIBOMANA

Claimant

**APPEAL 22A-UI-01087-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 04/04/21

Claimant: Appellant (2)

Iowa Code § 96.6(3) – Appeals

Iowa Admin. Code r. 871-24.19(1) – Determination and Review of Benefit Rights

Iowa Admin. Code r. 871-24.28(6-8) – Prior Adjudication

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Omar Sibomana, filed an appeal from the August 2, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2022. The hearing was held together with Appeal 22A-UI-01086-JC-T.

The claimant participated personally through a Kinyarwanda interpreter (Alex, #143456) from CTS Language Link. Morami Shah also testified. The employer/respondent, Remedy Intelligent Staffing Inc., participated through Vicky Matthias.

The administrative law judge took official notice of the administrative records. Department Exhibits 1 and 2 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision

ISSUES:

Is the appeal timely?

Was the separation adjudicated in a prior claim year?

Was the issue adjudicated in a prior representative’s decision?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of April 5, 2020.

Claimant separated from employment with the above employer on June 6, 2020. An initial decision dated August 2, 2021 (reference 03) denied benefits to the claimant based upon his separation with this employer. Claimant appealed the decision, a hearing was held, and the initial decision was reversed in Appeal 22A-UI-01086-JC-T.

Claimant then opened an unemployment claim with an effective date of April 4, 2021.

An initial unemployment insurance decision (Reference 01) denying benefits was mailed to claimant's last known address of record on August 2, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 12, 2021. Claimant moved in July 2021, and notified IWD of his address change in early September 2021. For unknown reasons, claimant did not receive the initial decisions in the mail until December 2021. Claimant filed his appeal on December 7, 2021 online (Department Exhibit 1). He filed a follow up appeal/second appeal on December 29, 2021 (Department Exhibit 2).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not have an opportunity to appeal the initial decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within seven days of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the separation at issue has been adjudicated in a prior claim year.

Iowa Code section 96.6(3) provides:

3. Appeals. a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Iowa Admin. Code r. 871-24.19(1) provides:

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

Inasmuch as the current decision is in conflict with the prior claim year decision, the current decision is reversed in favor of the claimant/appellant.

DECISION:

The August 2, 2021 (reference 01) unemployment insurance decision is reversed favor of the appellant. The appeal is timely. The prior decision on the separation remains in effect.



Jennifer L. Beckman
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February 23, 2022
Decision Dated and Mailed

jlb/mh