

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA MORROW
Claimant

APPEAL 21A-UI-21146-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/19/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Public Law 116-136, sec. 2104 – Waiver of FPUC Overpayment

STATEMENT OF THE CASE:

On September 16, 2021, claimant Amanda Morrow filed an appeal from the July 7, 2021 (reference 04) unemployment insurance decision that denied claimant's request that the agency waive her FPUC overpayment balance. After due notice was issued, a telephonic hearing was held at 3:00 p.m. on Tuesday, November 16, 2021. The claimant, Amanda Morrow, participated. Department's Exhibits D-1 and D-2 were 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 denying claimant's waiver request was mailed to claimant's last known address of record on July 7, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 17, 2021. The appeal was not filed until September 16, 2021, which is after the date noticed on the waiver denial decision.

In December 2020, claimant moved to Tennessee. She was still residing in Tennessee at the time the waiver denial decision was mailed to her address of record in Central City. Claimant did not know how long she would be staying in Tennessee, so she did not update her address. Instead, claimant has her mail sent to her parents' address, and her mother forwards her mail to her. Claimant believes she received the decision in mid-August 2021. She did not file her appeal at the time she received the decision. Instead, claimant waited until she received a subsequent overpayment notice in the mail to file her 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.

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 did not receive the decision in the mail prior to the appeal deadline because she chose to receive her mail at an address other than the address where she was residing. Claimant relied on her mother to receive her mail and then forward it to her in another state. Even then, after claimant received the decision approximately one month after it was issued, she waited approximately one month before filing her appeal. Claimant's delay was not due in any part 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 July 7, 2021 (reference 04) 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 21, 2021
Decision Dated and Mailed

lj/mh