

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY HOLCOMB
Claimant

SALVATION ARMY
Employer

APPEAL 22A-UI-05974-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Courtney Holcomb, filed an appeal from the March 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was not able and available for work from January 31, 2021 through February 13, 2021. The parties were properly notified of the hearing. A telephone hearing was held on April 18, 2022. The claimant participated. The employer did not participate. Exhibit A, B, D-1, D-2 and D-3 were received into the record. The hearing was held jointly with appeal 22A-UI-05976-SN-T and 22A-UI-05977-SN-T.

ISSUES:

Whether the claimant's appeal is timely?

Whether there are reasonable grounds to find the claimant's appeal otherwise timely?

Whether the claimant was able and available from January 31, 2021 through February 13, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has worked for the employer, the Salvation Army, since March 6, 2019, as an assistant manager. The claimant's hourly rate is \$9.25.

On January 31, 2021, the claimant was informed that she had been exposed to a coworker who had tested positive for Covid19. The employer instructed the claimant to quarantine until February 11, 2021. The claimant did not have symptoms of Covid19 during her quarantine period. She would have been able to work if the employer would have allowed her to work. She was not compensated during the quarantine. The claimant provided a statement written by Human Resources Coordinator Eric Lamed that confirmed this information. (Exhibit A) The claimant provided scheduling information showing she did not work those shifts. (Exhibit B)

The following section describes the findings necessary to resolve the timeliness of appeal issue:

A disqualification decision was mailed to claimant's last known address of record on March 22, 2021. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 1, 2021. (Exhibit D-1) The appeal was not filed until March 9, 2022, which is after the date noticed on the disqualification decision. (Exhibits D-2 and D-3)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant's appeal is not timely. He further concludes the claimant's appeal does not have reasonable grounds to be considered otherwise timely.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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

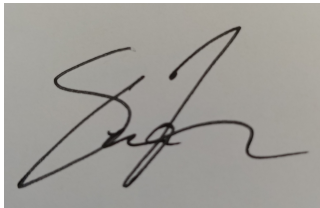
if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 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 have a reasonable opportunity to file a timely appeal. During the hearing, the claimant stated she thought she had received the decision. The claimant said she might have received the decision in January 2022. The administrative law judge does not find the claimant's testimony regarding when she received the decision credible. However, even if he did find it credible, the claimant should have appealed in January 2022, when she received the decision. In the absence of credible information suggesting she did not receive the decision or her receipt of it was delayed, the administrative law judge concludes the claimant has not met her burden to show reasonable grounds to find her appeal otherwise timely.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law 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:

The March 22, 2021, (reference 01), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Sean M. Nelson
Administrative Law Judge
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May 16, 2022
Decision Dated and Mailed

smn/kmj