

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUELINE A MCDONALD
Claimant

WALMART INC
Employer

APPEAL NO. 21A-UI-24950-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/07/21
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Jacqueline McDonald, filed a late appeal from the May 25, 2021, reference 01, decision that denied benefits effective March 7, 2021, based on the deputy's conclusion that the claimant was working enough to be considered employed and, therefore, did not meet the unemployment insurance availability requirement. After due notice was issued, a hearing was held on January 7, 2022. Claimant participated. Sylvia Perea, UI Services Manager, represented the employer. There were three appeal numbers set for a consolidated hearing: 21A-UI-24950-JTT, 21A-UI-24951-JTT, and 21A-UI-24952-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, DBRO, KPYX, KCCO, WAGE-A and WAGE-C and the deputy's record of contact with the claimant on or about April 28, 2021 for fact-finding interview.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Walmart, Inc. as a claims processor at a Walmart store in Davenport. The claimant usually works 40 hours a week. The claimant's usual work hours are 7:00 a.m. to 4:00 p.m. The claimant generally has Sunday and some Wednesdays off. The claimant's wage for last three years has been \$20.71. The claimant's supervisor during the relevant period was Elizabeth Masterson, Claims Supervisor. Ms. Masterson is still with the employer, but now works at a different store.

The claimant established an original claim for benefits that was effective March 7, 2021. Iowa Workforce Development set the weekly benefit amount at \$493.00. The relevant base period consists of the fourth quarter of 2019 through the third quarter of 2020. Walmart has reported quarterly wages for the claimant for the fourth quarter of 2019 through the third quarter of 2021 as follows:

<u>Quarter</u>	<u>Quarterly Wages</u>	<u>(Extrapolated Average Weekly Wage and Hours)</u>	
2019/4	12,685.66	975.82	47.11
2020/1	10,252.08	788.62	38.08
2020/2	13,655.83	1050.44	50.72
2020/3	10,634.71	818.05	39.50
2020/4	12,401.00	953.92	46.06
2021/1	10,005.15	769.63	37.16
2021/2	12,623.64	971.05	46.89
2021/3	11,686.83	898.99	44.72

The claimant established her March 7, 2021 original claim for benefits in response to the employer temporarily cutting her work hours from full-time to part-time effective March 7, 2021.

The claimant made weekly claims for the six weeks between March 7, 2021 and April 17, 2021 and reported wages as follows:

<u>Benefit Week End Date</u>	<u>Wages</u>
03/13/21	578.00
03/20/21	719.00 (390.00 + 329.00 PTO)
03/27/21	739.00
04/03/21	308.00
04/10/21	684.00
04/17/21	529.00

The claimant advises that she calculated her weekly wages by multiplying her hourly wage by the hours worked. Accordingly, the extrapolated hours worked would be as follows:

<u>Benefit Week End Date</u>	<u>Wages</u>	<u>Extrapolated Work Hours</u>
03/13/21	578.00	27.90
03/20/21	719.00	18.83(+ 15.88 PTO)
03/27/21	739.00	35.68
04/03/21	308.00	14.87
04/10/21	684.00	33.03 (including 2 paid sick days)
04/17/21	529.00	25.54

Aside from missing two days due to illness during the week that ended April 10, 2021, the claimant performed all the work the employer had for her during period of March 7, 2021 through April 17, 2021. The claimant used paid time off (PTO) during the week that ended March 20, 2021 to make up for lost work hours and lost wages during that week. During the week that ended April 10, 2021, the claimant was absent two days due to illness in response to receiving a second COVID-19 vaccine on April 6, 2021.

Based on the wages reported by the claimant, Iowa Workforce Development paid benefits only for the week that ended April 3, 2021. IWD paid \$308.00 in partial regular benefits and \$300.00 in Federal Pandemic Unemployment Compensation (FPUC). IWD did not pay benefits for the other five weeks in question because the claimant's reported wages exceeded her weekly benefit amount by more than \$15.00.

The claimant discontinued her weekly claims after the week that ended April 17, 2021 in connection with the employer restoring her full-time work hours.

On or about April 28, 2021, the claimant participated in a fact-finding interview conducted via email.

On May 25, 2021, Iowa Workforce Development mailed the reference 01 decision to the claimant's Davenport last-known address of record. The reference 01 decision denied benefits for the period beginning March 7, 2021, based on the deputy's conclusion that the claimant was working enough hours to be deemed employed and, therefore, did not meet the unemployment insurance availability requirement. The May 25, 2021, reference 01, decision stated the decision would become final unless an appeal was postmarked by June 4, 2021. At the time the reference 01 decision was mailed to the claimant, the claimant's mail was being delivered by a temporary postal carrier and the claimant experienced problems with not receiving her mail. The claimant's mailed would sometimes be delivered to the claimant's neighbors. The claimant would sometimes receive her neighbors' mail in error. The claimant did not receive the reference 01 decision when it was mailed to her. Accordingly, the claimant was unaware of the applicable June 4, 2021 appeal deadline and did not file an appeal by that appeal deadline.

On September 30, 2021, Iowa Workforce Development mailed two overpayment decisions to the claimant's address of record. The reference 02 decision held the claimant was overpaid \$308.00 in regular benefits for the week that ended April 3, 2021, based on the earlier decision that denied benefits in connection with the able and available determination. The reference 03 decision held the claimant was overpaid \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for the same week, based on the same reference 01 decision. The overpayment decisions included an October 10, 2021 deadline for appeal. Because October 10, 2021 was a Sunday, and because October 11, 2021 was the Columbus Day legal holiday, the effective appeal deadline was extended to October 12, 2021. The reference 02 and 03 decisions were delivered to the claimant's address of record in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal by the October 12, 2021 deadline.

On August 23, 2021, the claimant had traveled from her home in Davenport to Billings, Montana to assist her terminally ill sister with pressing personal matters. The claimant's sister passed away on October 11, 2021.

The claimant arrived home on October 16, 2021. While the claimant had been away from home, the claimant's husband set aside the claimant's accumulating mail so that the claimant could deal with it upon her arrival home. The claimant and her husband did not have a system in place for the claimant's husband to review time-sensitive correspondence and bring that correspondence to the claimant's attention. The claimant reviewed her mail on October 16, 2021 and reviewed the reference 02 and 03 overpayment decisions at that time. The claimant then waited until November 7, 2021 to file her appeal. The claimant filed the appeal after she spoke with an IWD representative and that person specifically advised her to file an appeal. The Appeals Bureau received the claimant's online appeal on November 7, 2021 and treated it as an appeal also from the May 25, 2021, reference 01, decision.

REASONING AND CONCLUSIONS OF LAW:

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 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. 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the May 25, 2021, reference 01, decision, based on unreasonable delay in submitting the appeal. The claimant did not receive the reference 01 decision when it was mailed to her on May 25, 2021. The claimant had participated in a fact-finding interview by email on or about April 28, 2021. Despite that experience, and despite not receiving a decision regarding her eligibility for benefits, the claimant did not contact the deputy or anyone else at IWD to inquire about the status of the eligibility determination. Based on the claimant not receiving the decision when it was mailed to her in May 2021, the claimant had good cause for not filing an appeal by the June 4, 2021 applicable appeal deadline. See Iowa Administrative Code rule 871-24.35(2) (regarding good cause attributable to the United States Postal Service). However, that is not the end of the story. The claimant learned of the reference 01 disqualification decision when she reviewed the reference 02 and reference 03 overpayment decisions during the weekend of October 16-17, 2021. Both overpayment decisions referred to the earlier disqualification decision as the basis for the overpayment decisions, and thereby provided notice of the decision. Both overpayment decisions referenced the 10-day deadline for appeal, measured from the mailing date of the decision. The claimant unreasonably delayed filing an appeal to November 7, 2021, well over 10 days after receiving notice of each decision. Based on this unreasonable delay, there is not good cause to treat the late appeal as a timely appeal. Because the appeal is untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in this matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 25, 2021, reference 01, decision is affirmed. Though the claimant had good cause for not filing an appeal from the decision by June 4, 2021 appeal deadline, the claimant unreasonably delayed filing an appeal to the November 7, 2021. Based on the unreasonable delay, the appeal was untimely. The May 25, 2021, reference 01, decision that denied benefits effective March 7, 2021, based on the deputy's conclusion that the claimant was working enough to be considered employed and, therefore, did not meet the unemployment insurance availability requirement, remains in effect for the affected period of March 7, 2021 through April 17, 2021.



James E. Timberland
Administrative Law Judge

February 4, 2022
Decision Dated and Mailed

jet/scn