

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA K KLEIN
Claimant

ROC TAPROOM INC
Employer

**APPEAL 21A-UI-12532-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing
Iowa Code § 96.5(3) – Work Refusal
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On May 19, 2021, Laura Klein (claimant/appellant) filed an appeal from the August 31, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 15, 2020.

A telephone hearing was held on July 29, 2021. The parties were properly notified of the hearing. Claimant participated personally. ROC Taproom Inc (employer/respondent) participated by HR Rep. Juliet Diaz.

Employer's Exhibits 1-4 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant able and available for work?
- III. Did the claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

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

Claimant began working for employer on or about September 27, 2019. Claimant was hired as a part-time server. The restaurant closed on or about March 15, 2020 due to the pandemic. The restaurant was set to reopen on May 18, 2020. Employer contacted claimant and other employees and instructed them to appear for one of three meetings on May 15, 16, and 17, 2020 if they wished to return to work. Claimant did attend one of the meetings and at that time notified the GM and the scheduling manager that she was available to work any days or hours.

Claimant was scheduled to work on May 20, 2021. However, claimant did not see herself posted on the schedule and so did not appear for work. Claimant followed up shortly thereafter

with her managers to see if she was going to be scheduled. She was told at that time that she would be added to the schedule. No one notified her that she had been scheduled and absent or that she was removed from the schedule for that reason. Claimant still was not added to the schedule after contacting management. After trying a couple more times to get the issue resolved, claimant gave up and pursued work elsewhere. Claimant did not receive letters from employer about scheduling because she had changed addresses and her mail was not properly forwarded by the postal service.

Claimant filed a claim for benefits from the benefit week ending March 21, 2020 through the benefit week ending July 18, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on August 31, 2020. That was claimant's correct address at that time. Claimant did not receive the decision denying benefits. She was unaware that she had been denied benefits until she got a decision on or about May 15, 2021, which found she had been overpaid benefits. She appealed shortly thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The August 31, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 15, 2020 is REVERSED. Claimant was able and available for work and did not refuse recall to suitable work. Benefits are therefore allowed.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. Claimant's appeal is therefore timely, and the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this

subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge finds claimant was able and available for work during the weeks filed and did not refuse recall to suitable work. Claimant indicated her interest in returning to work by appearing for the meeting and then following up with management multiple times about getting on the schedule. It appears that due to issues with the schedule and poor communication, claimant was never added back on the schedule after she inadvertently missed the first day she was scheduled. While this is unfortunate and claimant could have perhaps took it upon herself to reach out to others to rectify the scheduling issues, her failure to do so does not constitute a work refusal. Benefits are therefore allowed during the weeks filed.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The August 31, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 15, 2020 is REVERSED. Claimant was able and available for work and did not refuse recall to suitable work. Benefits are therefore allowed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 9, 2021
Decision Dated and Mailed

abd/lj