

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DINITA A STEUBER
Claimant

BURRELL OIL CO INC
Employer

APPEAL NO. 21A-UI-24615-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant, Dinita Steuber, filed a late appeal from the January 25, 2021, reference 01, decision that denied benefits effective November 1, 2020, based on the deputy's conclusion that the claimant was unable to perform at that time due to illness. After due notice was issued, a hearing was held on January 3, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-24616-JT-T. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, KFFV, and the reference 01 and 02 decisions.

ISSUES:

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

Whether the claimant was able to work and available for work during the three weeks between November 1, 2020 and November 21, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established on original claim for benefits that was effective November 1, 2020. Iowa Workforce Development set the weekly benefit amount at \$389.00. The claimant made weekly claims for the three weeks ending November 7, 14 and 21, 2020. The claimant reported wages and vacation pay for the week that ended November 7, 2020 that exceeded her weekly benefit amount by more than \$15.00 and did not receive benefits for that week. The claimant reported zero wages for the weeks that ended November 14 and 21, 2020 and received regular state benefits totaling \$778.00 for those two weeks.

At the time the claimant established her claim for unemployment insurance benefits, she was employed full-time with Burrell Oil Company, Inc. in accounting and park management. The claimant's hourly wage was \$21.50 an hour. The claimant established her claim for benefits in

response to her 18-year-old daughter becoming ill with and testing positive for COVID-19. The claimant's daughter was a college student at the time, but was home for a visit at the time she became ill. The claimant's daughter submitted to COVID-19 testing on November 4, 2020 and received a positive COVID-19 test result on November 7, 2020. The claimant notified the employer of her need to be off work to care for her daughter and to quarantine. The claimant understood she was to quarantine for two weeks from the November 7, 2020 positive test result. The claimant did not personally become ill. The claimant worked 1.5 days during the week that ended November 7, 2020. The claimant did not work during the weeks that ended November 14 and 21, 2020. The claimant returned to work on Monday, November 30, 2020, following the Thanksgiving holiday. During the period when the claimant was away from the employment, the employer continued to have the claimant's same work available for the claimant.

On January 25, 2021, Iowa Workforce Development mailed the reference 01 decision to the claimant's Fairmont, Minnesota last-known address of record. There was no scheduled fact-finding interview prior to entry of the decision and the claimant did not speak with an Iowa Workforce Development representative prior to entry of the decision. The reference 01 decision denied benefits effective November 1, 2020, based on the deputy's conclusion that the claimant was unable to perform at that time due to illness. The decision stated the decision would become final unless an appeal was postmarked by February 4, 2021 or was received by the Appeals Section by that date. The decision provided clear and concise instructions for appeal. The claimant did not receive the decision. The claimant did not file an appeal from the decision by the February 4, 2021 appeal deadline or at any point prior to November 2, 2021.

On October 27, 2021, Iowa Workforce Development mailed the reference 02 overpayment decision to the claimant. The reference 02 decision stated the claimant was overpaid \$778.00 in benefits for the two weeks between November 8, 2020 and November 21, 2020, based on the January 2021 decision that denied benefits in connection with the able and available determination. The reference 02 decision included a November 6, 2021 deadline for appeal.

On November 2, 2021, the claimant completed and transmitted an on-line appeal from the reference 02 decision. Iowa Workforce Development received the appeal on November 2, 2021 and treated it as also a late appeal from the 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 claimant's appeal was filed on November 2, 2021, when the Appeals Bureau received the electronically transmitted appeal.

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). 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 evidence in the record establishes good cause to treat the November 2, 2021 appeal as a timely appeal from the January 25, 2021, reference 01, decision. The claimant did not receive the reference 01 decision. The claimant became aware of the denial of benefits when she received the October 27, 2021, reference 02, overpayment decision and filed an appeal within six days of the mailing of the reference 02 decision. The good cause to treat the late appeal from the reference 01 decision as a timely appeal is based on the United States Postal Services' failure to deliver the reference 01 to the claimant. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to enter a decision on the merits in

connection with the reference 01 decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1), (10) and (29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant did not meet the availability requirement during the three weeks between November 1, 2020 and November 21, 2020 and is not eligible for benefits for that period.

During the week that ended November 7, 2020, the claimant was only available for 1.5 days of work and, therefore, not available for with her employer for the majority of the week. During the majority of that week and through the week that ended November 21, 2020, the claimant was off work due to the need to care for her ill adult child and due to her need to quarantine in light of her exposure to COVID-19. This period away from work was a leave of absence requested by the claimant and approved by the employer.

DECISION:

The claimant's appeal from the January 25, 2021, reference 01, decision was timely. The decision is modified as follows, without change to the eligibility determination. The claimant did not meet the availability requirements during the three weeks between November 1, 2020 and November 21, 2020 and is not eligible for regular benefits for that period.



James E. Timberland
Administrative Law Judge

January 27, 2022
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.