

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET L STRAND
Claimant

DEERE & COMPANY
Employer

APPEAL 22A-UI-07496-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/17/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(4) – Labor Disputes

STATEMENT OF THE CASE:

On March 28, 2022, Janet Strand (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated November 24, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant’s unemployment during that period was due to a work stoppage caused by a labor dispute.

A telephone hearing was held on May 10, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-07496-AD-T and 22A-UI-07497-AD-T are related and were heard together, forming a single hearing record. The claimant participated personally. Deere & Company (employer/respondent) did not appear or participate. Official notice was taken of the administrative record.

ISSUES:

- I. Is the appeal timely?
- II. Is the claimant disqualified from benefits due to a labor dispute?

FINDINGS OF FACT:

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

Claimant began working for employer on July 24, 2000. Claimant remains employed with employer. There was a work stoppage caused by a labor dispute concerning the terms and conditions of employment, beginning on October 14, 2021. Claimant was employed as a full-time crane operator in Department 644 at employer’s Waterloo location immediately prior to the work stoppage.

Claimant is not a union member. She was not participating in or financing the labor dispute which caused the stoppage of work. There was no work available to claimant during the work stoppage. Claimant was ready, willing, and able to work during this period.

Claimant does belong to a class of workers which were employed at the premises where the stoppage occurred immediately before the commencement of the stoppage and who were participating in or directly interested in the dispute.

The labor dispute ended on November 20, 2021 and resulted in more favorable terms and conditions of employment for claimant and other employees. Claimant returned to her previous position on or about that date. Claimant has been employed by employer since the labor dispute ended.

Claimant filed a claim for benefits each week from the benefit week ending October 23, 2021 and continuing through the benefit week ending November 20, 2021.

The Unemployment Insurance Decision was mailed to claimant at the above address on November 24, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by December 4, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on March 28, 2022.

The delay in appealing was due to claimant not receiving the decision. Claimant was prompted to appeal when she received an overpayment decision several months later. Prior to that she was unaware she had been denied benefits. She promptly appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated November 24, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is AFFIRMED.

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 available evidences indicates that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.5(4) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

4. Labor disputes.

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Iowa Admin. Code r. 871-24.33(1) provides:

As used in sections 96.5(3)“b”(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

Iowa Admin. Code r. 871-24.34 provides in part:

Labor dispute—policy.

(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

A claimant is disqualified from unemployment insurance benefits during a work stoppage caused by a labor dispute. A work stoppage due to a labor dispute must be the cause of unemployment to result in the striking worker's disqualification from receiving unemployment benefits. *Titan Tire Corp. v. Employment Appeal Bd.*, 641 N.W.2d 752 (Iowa 2002). There is an exception to this disqualification if the claimant is not financing, participating in, or directly interested in the labor dispute **AND** does not belong to a class of workers who are financing, participating in, or directly interested in the labor dispute. See Iowa Code 96.5(4)(a).

There is little guidance in Iowa statutes, administrative regulations, or case law as to what constitutes “participating in or financing or [being] directly interested in the dispute” within the meaning of the statute at issue. However, the plain meaning of “interest” supports a finding that at minimum others in claimant’s class of workers who were on strike were “interested in the labor dispute.” See INTEREST, Black’s Law Dictionary (11th ed. 2019) (defining interest as “the object of any human desire; esp., advantage or profit of a financial nature.”). The evidence also supports a finding that others in claimant’s class of workers were participating in the labor dispute by going on strike.

Case law from the Illinois Appellate Court, while not binding here, is persuasive. The Illinois corollary to the Iowa statute also provides that claimants are “ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute...” It also provides an exception where:

(A) the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and

(B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute

820 Ill. Comp. Stat. Ann. 405/604. In a similar case to the one at hand, the Illinois Appellate Court held that an employee who was not a union member was ineligible for unemployment benefits during a work stoppage caused by a labor dispute, where union members of his grade or class were on strike and therefore participating in and interested in the labor dispute. *Boone v. Dep't of Lab.*, 495 N.E.2d 66, 68 (1986). Because the court found claimant belonged to an interested grade or class of workers it did not reach the issue of whether the claimant was himself directly interested in the labor dispute due to his receiving an increase in wages and benefits as a result of the strike. *Id.*

The administrative law judge finds claimant's unemployment was due to a work stoppage caused by a labor dispute. Specifically, the stoppage of work began at claimant's work location due to an employee strike concerning the terms and conditions of their employment. The administrative law judge further finds other employees in claimant's grade or class of workers were participating in and interested in the labor dispute because they were taking part in a strike that concerned their pay and benefits.

It is unnecessary to reach the issue of whether claimant was directly interested in the labor dispute. Because claimant's unemployment was due to a work stoppage caused by a labor dispute and claimant does not meet both prongs of the statutory exemption to disqualification, benefits must be denied during the period of unemployment caused by the labor dispute.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated November 24, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits from October 14, 2021 through November 20, 2021 based on a finding claimant's unemployment during that period was due to a work stoppage caused by a labor dispute is **AFFIRMED**. Benefits must be denied, and employer's account shall not be charged.



Andrew B. Duffelmeyer
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May 12, 2022
Decision Dated and Mailed

abd/abd