

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANYA L KOLLMAN
Claimant

APPEAL 21A-UI-20964-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE COMPANY
Employer

**OC: 05/10/20
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On September 20, 2021, Tanya Kollman (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated October 15, 2020 (reference 01) that denied unemployment insurance benefits as of July 12, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire.

A telephone hearing was set for November 17, 2021. Claimant participated. At that time claimant requested the hearing be rescheduled so she could secure the participation of a witness who was unavailable at that time. The request to reschedule was granted.

A telephone hearing was therefore set for December 14, 2021 at 1 p.m. The parties were properly notified of the hearing. Claimant participated personally. Union Steward Timothy Cummings participated as a witness for claimant. John Deere Company (employer/respondent) did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant was temporarily laid off from her full-time position with employer in the weeks ending May 16, June 13, and July 18, 2020, due to a lack of work caused by the pandemic. She filed weekly claims and was able and available for work during those weeks.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 15, 2020. That was claimant's correct address at that time. However, claimant has no recollection of receiving the decision. She was unaware there was an issue with her claim for benefits until she received overpayment decisions nearly a year later. She 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 October 15, 2020 (reference 01) that denied unemployment insurance benefits as of July 12, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire is REVERSED.

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.
 - (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 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 96.4(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 section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

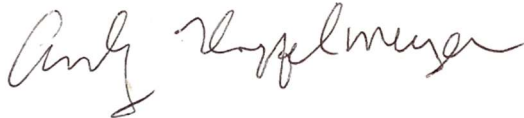
c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Claimant was temporarily laid off from her full-time position with employer in the weeks ending May 16, June 13, and July 18, 2020, due to a lack of work caused by the pandemic. She filed weekly claims and was able and available for work during those weeks. The administrative law

judge therefore concludes claimant was temporarily unemployed and eligible for benefits in each week of those weeks.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated October 15, 2020 (reference 01) that denied unemployment insurance benefits as of July 12, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire is REVERSED. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
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December 22, 2021
Decision Dated and Mailed

abd/abd