

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MINDY J WEBBER

Claimant

MUSCATINE CARE PROPERTIES LLC

Employer

APPEAL 21A-UI-14865-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/21

Claimant: Appellant (4)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)g – Requalification

STATEMENT OF THE CASE:

On June 30, 2021, Mindy Webber (claimant/appellant) filed an appeal from the February 23, 2021 (reference 01) decision that denied unemployment insurance benefits based on a finding claimant voluntarily quit work on December 21, 2020 without good cause attributable to employer. A telephone hearing was held on August 25, 2021. The parties were properly notified of the hearing. Claimant participated personally. Muscatine Care Properties, LLC (employer/respondent) did not register a number for the hearing or participate. Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Has claimant requalified for benefits since the separation?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on February 23, 2021. That was claimant's correct address at that time. Claimant received the decision around the end of February or early March. She did not appeal at that time because she had begun work for Recover Health Services approximately a month earlier. The deadline to appeal was March 5, 2021.

Claimant began working for Recover Health Services on January 25, 2021. She earned \$1,538.00 per week in that position. Her weekly benefit amount is \$512.00. Ten times her weekly benefit amount is \$5,120.00. She earned that much effective with the week ending February 27, 2021, at which point she would have earned approximately \$6,153.00. Claimant was unexpectedly laid off from Recover Health Services on March 22, 2021, due to a merger and restructuring.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The determination that claimant's separation from employment was disqualifying therefore remains in force. However, claimant has earned sufficient wages to requalify for benefits effective February 21, 2021.

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."

Iowa Code section 96.5(1) provides:

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

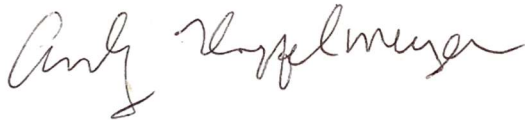
1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The claimant's appeal was not timely and so the administrative law judge does not have jurisdiction to change the determination that the claimant's separation from employer was disqualifying. However, the claimant has earned sufficient wages to requalify for benefits effective February 21, 2021. Benefits are therefore allowed from that date, provided she is not otherwise disqualified or ineligible.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The determination that claimant's separation from employment was disqualifying therefore remains in force. However, claimant has earned sufficient wages to requalify for benefits effective February 21, 2021. Benefits are therefore allowed from that date, provided she is not otherwise disqualified or ineligible.



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

August 30, 2021

Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.