

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TETEE BARSHALL
Claimant

APPEAL NO. 21A-UI-00462-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a late appeal from the June 12, 2020 (reference 02) decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on February 8, 2021. Claimant participated. Rhonda Wagoner represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-00463-JTT and 21A-UI-00464-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, KPYX, WAGE-A, the June 12, 2020 (reference 02) decision, the October 28, 2020 (reference 03) decision, and the November 4, 2020 (reference 04) decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 12, 2020, Iowa Workforce Development mailed the June 12, 2020 (reference 02) decision to the claimant's Des Moines last-known address of record. The reference 02 decision denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. The claimant received the decision in a timely manner, prior to the deadline for appeal. The decision stated that the decision would be final unless an appeal was postmarked by June 22, 2020 or was received by the Appeal Section by that date. The claimant contacted Iowa Workforce Development customer service upon receipt of the decision and was advised to file an appeal. The claimant did not file an appeal by the appeal deadline or at any point prior to December 9, 2020.

On October 28 2020, Iowa Workforce Development mailed a reference 03 decision to the claimant. The reference 03 decision stated that the claimant had been overpaid \$6,458.00 in regular benefits for 12 weeks between March 15, 2020 and June 6, 2020, based on the earlier decision that denied benefits in connection with the availability determination. The October 28,

2020 (reference 03) stated that the decision would be final unless an appeal was postmarked by November 7, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 7, 2020 was a Saturday, and the next working day was Monday, November 9, 2020.

On November 4, 2020, Iowa Workforce Development mailed a reference 04 decision to the claimant. The reference 04 decision stated that the claimant had been overpaid \$6,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for 10 weeks between March 29, 2020 and June 6, 2020 because of the earlier decision that denied benefits for that period. The November 4, 2020 (reference 04) decision stated that the decision would be final unless an appeal was postmarked by November 14, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 14, 2020 was a Saturday, and the next working day was Monday, November 16, 2020.

On December 9, 2020, the claimant emailed an appeal to the Appeals Bureau. The email referenced a \$6,458.00 overpayment of regular benefits. The Appeals Bureau received the appeal on December 9, 2020 and treated it as an appeal from all three of the above decisions. The claimant subsequently filed another appeal by email on December 23, 2020 in which appeal she addressed the combined \$12,458.00 overpayment amount.

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 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). One 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 claimant's appeal from the June 12, 2020 (reference 02) decision that denied benefits effective March 15, 2020 is untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the June 22, 2020 deadline, but elected to defer filing the appeal for several months until December 9, 2020. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). There is not good cause to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the June 12, 2020 (reference 02) decision is untimely. The decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that the claimant was not partially unemployed, shall stand.



James E. Timberland
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**