

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BAMBI S COX
Claimant

CARING HANDS & MORE LLC
Employer

APPEAL 22A-UI-02544-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On January 9, 2022, Bambi Cox (claimant/appellant) filed an appeal from the decision dated March 9, 2021 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and therefore not partially unemployed.

A telephone hearing was held on February 22, 2022. The parties were properly notified of the hearing. Claimant participated personally. Caring Hands & More LLC (employer/respondent) participated by Program Director Rodney Anderson. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant still employed at the same hours and wages?
- III. Is the claimant able to and available for work?
- IV. Is the employer's account subject to charge? Is the claimant an on-call worker?
- V. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant began working for employer on November 15, 2018. Claimant was employed part-time as a Direct Support Professional. She averaged around 30 hours per week, although her hours were not guaranteed and frequently fluctuated based on need. The most recent day claimant performed work for employer was October 7, 2020.

Claimant filed claims for benefits each week from the benefit week ending May 23, 2020 and continuing through the benefit week ending October 10, 2020. Claimant was ill and unable to work from May 21, 2020 until returning on July 7, 2020. At that time she returned back to her usual part-time position.

The fluctuation in hours is reflected in quarterly wage records. Claimant earned about \$2,400.00 in wages from employer in the fourth quarter of 2019 and the first quarter of 2020. She earned \$4,466.00 in wages in the second quarter of 2020 and \$3,499.00 in the third quarter of 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on March 9, 2021. That was claimant's correct address at that time. Claimant did not receive the decision and was unaware she had been denied benefits until she received overpayment decisions dated December 29, 2021. Claimant 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 March 9, 2021 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and therefore not partially unemployed 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 record in this case shows 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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The administrative law judge finds claimant was still employed part-time for the same hour and wages as contemplated in the original contract for hire and therefore not partially unemployed during the period in question. Claimant's hours were not guaranteed and frequently fluctuated. In fact, wage records show claimant actually worked substantially more in the later portions of her employment than in the earlier portions. Claimant is therefore ineligible for benefits effective July 5, 2020. Because claimant was receiving the same employment from the employer, benefits paid shall not be charged against the employer's account.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 9, 2021 (reference 03) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and therefore not partially unemployed is AFFIRMED.



Andrew B. Duffelmeyer
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March 8, 2022
Decision Dated and Mailed

abd/abd