

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRUCE W CROY
Claimant

**KIRKWOOD COMMUNITY COLLEGE-
AREA 1**
Employer

APPEAL 21A-UI-00097-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 17, 2020, Bruce Croy (claimant/appellant) filed an appeal from the April 30, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on February 2, 2021. The parties were properly notified of the hearing. Claimant participated personally. Kirkwood Community College-Area 1 (employer/respondent) participated by Sheri Hlavacek. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?

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 April 30, 2020. 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 May 10, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant does not recall receiving the decision. However, he did receive subsequent decisions in late October 2020 which determined he had been overpaid based on the April 30, 2020 decision. It was clear to claimant at that time that he had been denied benefits. Claimant did not appeal those decisions until November 17, 2020. Claimant delayed appealing after receiving the overpayment decisions because he was panicked and unsure how to proceed. He finally appealed after calling the department and learning he could appeal online.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The administrative law judge has no authority to change the decision of the representative. The April 30, 2020 (reference 01) unemployment insurance decision that denied benefits therefore remains in force.

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.”

It is unclear whether claimant received the decision. Assuming claimant did not receive the decision, he was nonetheless made aware of it when he received the subsequent decisions in late October 2020 which determined he had been overpaid based on the April 30, 2020 decision.


However, claimant delayed in appealing those decisions as well, waiting for two weeks or more before appealing. Claimant delayed appealing after receiving the overpayment decisions because he was panicked and unsure how to proceed. He finally appealed after calling the department and learning he could appeal online. The administrative law judge notes that the department's decisions clearly indicate how to appeal and the deadline for doing so. Nonetheless, claimant did not appeal those decisions until November 17, 2020.

If claimant had appealed shortly after receiving the overpayment decisions, the administrative law judge would be inclined to find the appeal here timely. However, the claimant waited two weeks or more to appeal after that time. While the administrative law judge is sympathetic to claimant's reasons for delaying, these were not good cause reasons such that the appeal is timely. There were clear instructions for how to appeal and the deadline for doing so.

The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The April 30, 2020 (reference 01) unemployment insurance decision that denied benefits therefore remains in force.



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

February 16, 2021
Decision Dated and Mailed

abd/mh

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>.