

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD CRONK
Claimant

APPEAL NO: 21A-UI-18039-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUNG MENS CHRISTIAN ASSOCIATION
Employer

OC: 03/15/20
Claimant: Appellant (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 3, 2020, (reference 03) unemployment insurance decision that concluded he refused a recall to return to work. After proper notice, a telephone hearing was conducted on October 11, 2021. The hearing was held together with Appeals 21A-UI-18040-JC-T, 21A-UI-18041-JC-T and 21A-UI-18043-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Official notice of the administrative records was taken. Department Exhibit D-1 was admitted.

ISSUES:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of March 15, 2020.

At the time claimant filed his claim, claimant had been permanently laid off from his full-time employer, Royal Supply Chain, and temporarily laid off from his part-time employer, YMCA. Prior to layoff, claimant had worked at the YMCA as a front desk/welcome attendant for approximately 2 hours per week, earning \$8.26 per hour. He was temporarily laid off due to COVID-19.

In late May, claimant's (former) manager, Betsy, called him to see if he was ready to return to work, as the YMCA was reopening. Claimant verbally committed and said he would. Betsy did not provide claimant a return to work date, but stated he would need to watch a video and return a form before his first shift back. Claimant agreed. Claimant checked the following week's schedule and did not see his name. When he asked his manager why, they realized there had

been a miscommunication that claimant had a deadline to return the form/watch the video in order to be put back on the schedule. Claimant had interpreted the information to mean they needed to be completed before he clocked in to his first shift. Upon realizing the misunderstanding, Betsy contacted HR to make sure claimant could still return to work and he was put on the next schedule. Claimant's part-time employment resumed and he was otherwise able and available until he accepted new full-time employment August 25, 2020 and discontinued making weekly claims.

An initial decision dated September 3, 2020 (reference 03) was mailed to claimant's address of record. The decision stated claimant had refused a recall to work. Claimant received the decision at some point, but does not recall when, except he had returned back to work for the YMCA and was working full-time at his new job. Claimant stated he did not realize the decision could result in an overpayment of benefits, based upon the IWD representative's comments during the fact-finding interview (prior to the decision) about the case not being "worth it" due to claimant working four hours every two weeks for this employer. Upon receiving overpayment decisions dated August 11, 2021, (almost one year after the initial decision) claimant filed his appeal on August 6, 2021 (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United

States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Based on the evidence presented, the administrative law judge concludes that claimant's appeal was delayed, in part, due to the agency's representative miscommunication or error pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal is accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant did not refuse an offer or recall to work.

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 96.1A, subsection 38, paragraph "b", subparagraph (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 Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). **Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work** and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work.

In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases. (emphasis added)

The undisputed evidence is claimant accepted a recall back to work based upon a phone call from his employer in late May 2020. There was no refusal and claimant was able and available to return. Claimant was delayed returning by approximately one week due to a miscommunication between the parties, but this is not a refusal of work, nor was claimant unavailable for work. Accordingly, the administrative law judge concludes the initial decision, which denied benefits on the basis that claimant refused a recall to work effective May 31, 2020 is reversed, and benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 3, 2020 (reference 03) initial decision is REVERSED. The appeal is accepted as timely. The claimant did not refuse an offer of suitable work or recall to work. The claimant was otherwise able and available for work. Benefits are allowed, provided he is otherwise eligible.



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October 14, 2021
Decision Dated and Mailed

jlb/mh