

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN I MOORE
Claimant

STEWART MOORE
Employer

APPEAL 22A-UI-11463-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Appellant (5)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Eligibility – Able, Available, Work Search

STATEMENT OF THE CASE:

On May 2, 2022, Susan Moore (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 30, 2021 (reference 01) that denied unemployment insurance benefits as of October 25, 2020 based on a finding that claimant was unable to perform work due to illness.

A telephone hearing was held on June 17, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-11463 and 22A-UI-11464 are related and were heard together, forming a single hearing record. Claimant participated personally. Stewart Moore (employer/respondent) did not appear or participate. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer on July 1, 2011. Claimant is still employed there. Claimant is employed as a part-time community trainer. Claimant filed an original claim for benefits effective October 25, 2020. Claimant filed weekly continued claims through November 21, 2020. Claimant self-quarantined for 18 days from November 4 through 22, 2020 due to a COVID-19 diagnosis. Claimant was not available for work during that time. Claimant was working as usual prior to that period, effective October 25, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on March 30, 2021. 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 April 9, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. An appeal was filed on May 2, 2022.

The delay in appealing was due to claimant not receiving the decision. Claimant was prompted to appeal when she received a subsequent decision dated April 29, 2022 finding she was overpaid benefits as a result of the decision denying benefits. The appeals bureau set up an appeal of the decision denying benefits at the time it set up an appeal of the overpayment decision.

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 30, 2021 (reference 01) that denied unemployment insurance benefits as of October 25, 2020 based on a finding that claimant was unable to perform work due to illness is MODIFIED with no change in effect.

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 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Benefits are denied effective October 25 and continuing through November 22, 2020. Claimant was working as usual and therefore unavailable for other work from October 25 through November 3, 2020. Claimant was unavailable for work due to quarantining from November 4 through November 22, 2020. Because claimant was unavailable for work during the weeks filed she was ineligible for benefits in those weeks.

The administrative law judge notes that while this decision denies regular state unemployment insurance benefits, the evidence indicates claimant may be eligible for Pandemic Unemployment Assistance (PUA). Claimant must apply for PUA to determine her eligibility. Further information on PUA, including how to apply, is set forth below.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 30, 2021 (reference 01) that denied unemployment insurance benefits as of October 25, 2020 based on a finding that claimant was unable to perform work due to illness is MODIFIED with no change in effect. Benefits are denied effective October 25, 2020 due to claimant being unavailable for work.



Andrew B. Duffelmeyer
Administrative Law Judge

June 23, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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.

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.