

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANA D HERNANDEZ
Claimant

BATH & BODY WORKS LLC
Employer

APPEAL 22A-UI-06454-AD

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/10/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On March 9, 2022, Ana Hernandez (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 17, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that she voluntarily quit work on December 27, 2020 for personal reasons.

Claimant requested an in person hearing. Notices of hearing were mailed to the parties’ last known addresses of record on April 28, 2022 for an in-person hearing to be held May 17, 2022 at 2 p.m. at the IWD office in Sioux City. Appeal Nos. 22A-UI-06454-AD, 22A-UI-06458-AD and 22A-UI-06459-AD are related and were heard together at that time.

Claimant appeared and participated personally. Bath & Body Works LLC (employer/respondent) did not appear or participate. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the appeal timely?

FINDINGS OF FACT:

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

Claimant filed an original claim for unemployment insurance benefits effective January 10, 2021. Claimant filed weekly continued claims through March 20, 2021. Claimant received unemployment insurance benefits in the total amount of \$2,453.00 and Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$2,100.00 during this period.

An unemployment insurance was then issued dated March 17, 2021 (reference 01), which disqualified claimant from unemployment insurance benefits based on a finding that she voluntarily quit work on December 27, 2020 for personal reasons. The decision was mailed to

claimant at the above address on March 17, 2021. That was claimant's correct address at that time. Claimant did receive the decision in a timely manner. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 27, 2021.

Claimant chose not to appeal the decision when she received it. She did not appeal it because she believed it only disqualified her from benefits from the date of the decision rather than from the date of the disqualifying separation. Claimant later appealed decisions 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 that time.

The denial decision does not explicitly state that the denial of benefits is retroactive to the date of separation. However, it does state that benefits are denied because of a separation from employment on December 27, 2020; that claimant must have earned sufficient wages after the separation to become eligible for benefits; and that if the decision is not reversed on appeal it may result in an overpayment. Notably, the decision does not state that it only effects claimant's eligibility for benefits prospectively.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 17, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that she voluntarily quit work on December 27, 2020 for personal reasons is therefore final and 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."

The administrative law judge finds claimant received the decision in a timely manner. Claimant chose not to appeal the decision when she received it. She did not appeal it because she believed it only disqualified her from benefits from the date of the decision rather than from the date of the disqualifying separation.

The administrative law judge finds the language of the decision was sufficient to put claimant on notice of its effect. This is because the decision states that benefits are denied because of a separation from employment on December 27, 2020; that claimant must have earned sufficient wages after the separation to become eligible for benefits; and that if the decision is not reversed on appeal it may result in an overpayment. Notably, the decision does not state that it only effects claimant's eligibility for benefits prospectively.

Claimant had a reasonable opportunity to file a timely appeal but did not do so. The administrative law judge therefore finds the appeal was not timely and he does not have jurisdiction to change the decision denying benefits, as it has become final.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated March 17, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that she voluntarily quit work on December 27, 2020 for personal reasons is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 23, 2022
Decision Dated and Mailed

abd/abd