

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHELSEA JOHNSON-ERICKSON
Claimant

AMES STORY TREE SERVICE INC
Employer

**APPEAL 21R-UI-07442-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On November 5, 2020, Chelsea Johnson-Erickson (claimant/appellant) filed an appeal from the June 18, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant was not available for work.

A telephone hearing was set for January 13, 2021 at 8 a.m. The claimant did not register a number for the hearing and did not participate. A default decision was entered accordingly. Claimant appealed the default decision to the Employment Appeal Board (EAB). The EAB remanded for a new hearing.

A telephone hearing was held on June 22, 2021. The parties were properly notified of the hearing. Claimant participated personally. Ames Story Tree Service Inc. (employer/respondent) did not register a number for the hearing or participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the 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 in 2018. Claimant lost childcare for her children due to the pandemic in mid-March 2020. She was unavailable for work from that date and continuing until the beginning of June 2020, when she was able to secure childcare. Claimant attempted to return to work with employer at that time but her position was no longer available.

Claimant began working full-time for Dan's Landscaping in July 2020. She continued in that position until approximately August 1, 2020. At that time she was forced to move and so left work at Dan's Landscaping and began part-time work as a bartender. Claimant was available for full-time work but was unable to find full-time work. She left employment entirely on or about November 25, 2020, to care for her children. She has been unavailable for work since that time.

Claimant has filed a claim for benefits each week from the benefit week ending March 21, 2020 through the benefit week ending June 19, 2021.

The Unemployment Insurance Decision was mailed to claimant at the above address on June 18, 2020. That was not claimant's correct address at that time. Claimant was living in Zearing at that time. Claimant believed she had updated her address in April 2020 but did not receive the decision at the new address. She was unaware that she had been denied benefits until she received decisions finding she had been overpaid benefits in early November 2020. She appealed shortly thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The June 18, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant was not available for work is MODIFIED in favor of appellant. She is eligible for benefits as set forth below, provided she is not otherwise ineligible for or disqualified from benefits.

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. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed her appeal shortly after learning of the decision denying benefits. Claimant's appeal is therefore timely, and 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".

Claimant is not eligible for benefits from the benefit week ending March 21, 2020 through the benefit week ending May 30, 2020, as she was unavailable for work during that period due to a lack of childcare. Claimant is eligible for benefits from the benefit week ending June 6, 2020 through the benefit week ending July 4, 2020. She was able and available for work during this time, as she had secured childcare. Claimant is not eligible for benefits from the benefit week ending July 11, 2020 through the benefit week ending August 1, 2020, as she was employed and working full-time during that period. Claimant is eligible for benefits from the benefit week ending August 8, 2020 through the benefit week ending November 28, 2020, as she was available for full-time work but only able to find part-time work during that period. She is not eligible for benefits effective with the benefit week ending December 5, 2020, as she left employment entirely at that time to care for her children and has been unavailable for work since then.

The administrative law judge notes that while this decision finds claimant eligible for benefits during certain periods, the administrative record shows other decisions have been issued disqualifying claimant for benefits based on her separations from employment. Claimant is eligible

for benefits only to the extent other decisions do not find her ineligible for or disqualified from benefits based on other issues.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The June 18, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant was not available for work is MODIFIED in favor of appellant. She is eligible for benefits as set forth above, provided she is not otherwise ineligible for or disqualified from benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 2, 2021
Decision Dated and Mailed

abd/scn

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>.