

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK J LEONARD

Claimant

THE WALDINGER CORPORATION

Employer

APPEAL 21A-UI-12000-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/31/21

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On April 28, 2021, The Waldinger Corporation (employer/appellant) filed an appeal from the April 16, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning March 14, 2021 based on a finding claimant was unemployed due to a short-term layoff and was able and available for work during the layoff.

A telephone hearing was held on July 20, 2021. The parties were properly notified of the hearing. Claimant participated personally. The Waldinger Corporation (employer/respondent) participated by Electrical Manager Joe Porepp. Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant began working for employer on July 1, 2017. Claimant is still employed there full time as an electrical apprentice. In this position, claimant must periodically attend week-long trainings. Claimant attended such a training in the week ending March 20, 2021. Claimant filed a claim for benefits in that week. Claimant was not available for work while in the training. Work was available had he not been in the training.

The Unemployment Insurance Decision was mailed to employer at 2601 BELL AVE DES MOINES IA 50321 on April 16, 2021. That was not employer's correct address at that time. Employer moved to a new location in June 2020 and the administrative record shows employer notified IWD by at least February 17, 2021 of the updated address. However, IWD did not process the address change until June 23, 2020. Porepp does not process employer's mail or file appeals

personally and so is unsure of the reason for the delay in appealing. The deadline to appeal was April 26, 2021. Employer appealed on April 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the appeal was timely. The April 16, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning March 14, 2021 is REVERSED.

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 the delay in appealing was due to department error. Specifically, the decision was not sent to the correct address because of an extended delay in the department processing employer's address change request. There is good cause for a brief delay in appealing where the decision was not sent to the correct address. The 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 was not available for work during the week filed because he was attending training during normal working hours. Work was available had he not been in the training. He is therefore ineligible for benefits in that week.

The administrative law judge understands this result may seem unfair to claimant, given that the training is required as an electrical apprentice and he is not otherwise compensated for the training. Nonetheless, the law's availability requirement mandates this result.

DECISION:

The administrative law judge concludes the appeal was timely. The April 16, 2021 (reference 02) unemployment insurance decision that allowed benefits beginning March 14, 2021 is REVERSED. Claimant is not eligible for benefits in the week ending March 20, 2021.



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

July 28, 2021
Decision Dated and Mailed

abd/ol

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>.