

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADAMA G KANTE
Claimant

KEOKUK HILLS BEEF COMPANY LLC
Employer

APPEAL 22A-UI-07831-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On March 21, 2022, Adama Kante (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated October 26, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on September 13, 2021 without a showing of good cause attributable to employer.

A telephone hearing was held on May 9, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appearing as a witness was his wife, Amy Kante. Keokuk Hills Beefs Company LLC (employer/respondent) participated by COO Keaton Walker. Office Administrator Melissa Woods observed the hearing.

Claimant’s Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on October 26, 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 November 5, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant did not personally receive the decision in October 2021 because he was out of the country. Mrs. Kante did receive the decision and notified claimant of it. Claimant was unable to file an appeal due to being out of the country. He did not instruct his wife to file an appeal on his behalf.

Claimant returned to the country on January 28, 2022. By that time the decision denying benefits had been misplaced. Claimant did not take steps to appeal until March 2022, when he requested another copy of the decision. He appealed on March 21, 2022 after receiving the copy. He did not take steps to appeal before that because he was ill for approximately two weeks and because he was hoping to get his job back. He did not contact his employer to request his job back until March 1, 2022, and only after not receiving a call back from employer did he take steps to appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated October 26, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on September 13, 2021 without a showing of good cause attributable to employer 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 proper notice of the decision and had a reasonable opportunity to file a timely appeal. First, while claimant was out of the country, he could have instructed Mrs. Kante to appeal on his behalf but did not do so. Even excusing this delay, he still delayed nearly two more months after returning to the country to appeal. While approximately two weeks of this period can be excused due to illness, there were still approximately six weeks in which he could have appealed. The decision being misplaced and his hoping to return to work are not good cause reasons for delay.

The administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant’s appeal was untimely. The decision dated October 26, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on September 13, 2021 without a showing of good cause attributable to employer is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 12, 2022
Decision Dated and Mailed

abd/abd