

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID M LAMERE
Claimant

CIT CHARTERS INC
Employer

APPEAL 20R-UI-04689-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/29/19
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 21, 2019 (reference 02) unemployment insurance decision that found that the claimant was not eligible for unemployment insurance benefits based upon him not being available for work during the times when work was available in his occupation. The parties waived due notice of the hearing. A telephone hearing was held on June 16, 2020. The claimant, David M. Lamere, participated personally. The employer, CIT Charters Inc., participated through witness John Grzywacz. The administrative law judge took official notice of the claimant's administrative records.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits effective September 29, 2019 was mailed to the claimant's correct address of record on October 21, 2019. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 31, 2019. The claimant filed his appeal on April 2, 2020. The claimant filed the appeal after the deadline because he did not want to initially appeal the decision because he was in the process of getting a different job.

The claimant filed his initial claim for unemployment insurance benefits effective September 29, 2019. Benefits paid out to him for the week-ending October 5, 2019; October 12, 2019; and October 19, 2019. Claimant then filed an additional claim for benefits effective March 15, 2020. Benefits paid out to him for the week-ending March 21, 2020; March 28, 2020; April 11, 2020; April 18, 2020; and April 25, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits of \$1,800.00 for the weeks between April 5, 2020 and April 25, 2020.

The claimant separated from employment with this employer in 2019. The issue of whether the claimant has been able to and available for work since his additional claim date of March 15, 2020 has not yet been the subject of an investigation and determination by the Benefits Bureau. That issue will be remanded for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is untimely.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". **Unless 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.** If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

(emphasis added).

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case

show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As such, the appeal was not timely filed pursuant to Iowa Code § 96.6(2) and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

However, as the determination of ability to or availability for work is made on a week by week basis, the issue of whether the claimant is eligible for benefits effective his additional claim date of March 15, 2020 is remanded to the Benefits Bureau for an initial investigation and determination. The issue of whether the claimant has been overpaid any regular State of Iowa unemployment insurance benefits and/or any Federal Pandemic Unemployment Compensation benefits is remanded to the Benefits Bureau for an investigation and determination.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, he may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

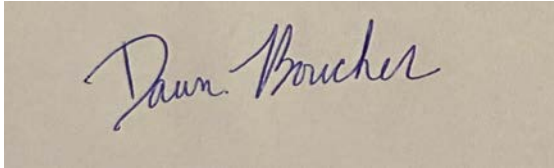
Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The October 21, 2019 (reference 02) decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

REMAND:

The issue of whether the claimant has established that he is able to and available for work effective his additional claim date of March 15, 2020 and whether the claimant is overpaid any regular State of Iowa unemployment insurance benefits and/or any Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

Dawn Boucher
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

db/scn