

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SKIKEY D JOHNSON
Claimant

DOLLY'S TAXI LLC
Employer

APPEAL 21A-UI-01232-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/20
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

On December 7, 2020, Skikey Johnson (claimant/appellant) filed an appeal from the September 3, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not able to work due to surgery.

A telephone hearing was held on February 16, 2021. The parties were properly notified of the hearing. Claimant participated personally. Dolly's Taxi LLC (employer/respondent) did not register a number for the hearing and did not 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 early 2019. The last day claimant worked was near the end of March 2020. Claimant had initially planned to have surgery at that time but did not end up having the procedure. However, his doctor did recommend at that time that he self-isolate due to his underlying medical conditions and the ongoing COVID-19 pandemic. Claimant notified employer he was not available to work and employer indicated it understood and he could return when he was ready. Claimant has been self-isolating based on his doctor's recommendation and plans to return to work when the pandemic has subsided.

The Unemployment Insurance Decision was mailed to claimant at the above address on September 3, 2020. That was claimant's correct address at that time. Claimant did receive the decision. Upon receiving the decision, he contacted the department and spoke with someone who indicated they would take a look at his case. He received payments around the time the

decision was issued and so thought based on that and his call with the department that there was no need to appeal. He appealed later after he had stopped receiving payments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The September 3, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not able to work due to surgery is MODIFIED with no change in effect.

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.”

Claimant delayed in appealing due to understandable confusion involving a contact with the department and the timing of benefit payments. He did appeal within a reasonable time of learning there may be an issue with his claim. The administrative law judge therefore finds the appeal timely and 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 has been self-isolating at the advice of his doctor since the end of March 2020 and continuing to present. By self-isolating claimant has made himself unavailable for work. He is therefore ineligible for benefits.

The administrative law judge wishes to note that while this decision denies regular, state unemployment insurance benefits, the evidence indicates claimant may be eligible for Pandemic Unemployment Assistance (PUA). Further information on PUA is set forth below.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The September 3, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not able to work due to surgery is MODIFIED with no change in effect. Claimant was not able to work due to surgery. However, he was unavailable for work due to self-isolating. He is therefore ineligible for benefits as of March 29, 2020.



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

March 1, 2021
Decision Dated and Mailed

abd/mh

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>.