

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY SCHROEDER
Claimant

GATEWAY TRAVEL & CRUISE INC
Employer

APPEAL 22A-UI-09766-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 19, 2022, Gateway Travel & Cruise Inc (employer/appellant) filed an appeal from the Statement of Charges dated August 9, 2021, which included charges for benefits paid to Stacey Schroeder (claimant/respondent) in the second quarter of 2021 for the claim year beginning March 14, 2021.

Because a decision regarding claimant's eligibility for benefits in that claim year was previously issued and led to the charges listed in the Statement of Charges dated August 9, 2021, the appeal was treated as an appeal of that eligibility decision. That decision, dated May 25, 2021 (reference 01), allowed benefits beginning March 14, 2021 based on a finding claimant was still employed and was able and available for work.

A hearing was scheduled and held on June 2, 2022. Appeal Nos. 22A-UI-09766 and 22A-UI-13042 are related and were heard together at that time, forming a single hearing record. Ms. Schroeder participated for both parties, as she is both the claimant and the owner of employer. Ms. Schroeder waived the 10-day notice period for 22A-UI-13042. Appeal No. 22A-UI-09766 was properly noticed. Appearing as a witness was employer's bookkeeper, Jackie Gerlach.

No exhibits were offered or admitted. Official notice was taken of the administrative record, including the Statement of Charges dated November 9, 2020 and August 9, 2021.

ISSUES:

Was the appeal timely?

FINDINGS OF FACT:

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

The unemployment insurance decision dated May 25, 2021 (reference 01) was mailed to employer at the above address on that date. That was employer's correct address at that time. Employer did receive the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 4, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

The decision contained a notification that employer's account would not be relieved of charges for benefits paid. Employer also received a Statement of Charges dated August 9, 2021 which included charges for benefits paid to claimant based on the May 25, 2021 decision finding her eligible for benefits.

Employer did not file an appeal until April 19, 2022. The delay in appealing was due to employer erroneously believing that it would not be charged for benefits paid. Employer was prompted to appeal at a later date when it learned its rate had increased.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the appeal was untimely. The decision dated May 25, 2021 (reference 01) that allowed benefits beginning March 14, 2021 based on a finding claimant was still employed and was able and available for work is therefore final and remains in force. The resulting Statement of Charges therefore remains in force as well.

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 employer received the decision allowing benefits in a timely manner and had a reasonable opportunity to appeal it but did not do so. Employer has not established a good cause reason for failing to do so. The decision is therefore final and remains in force, and the administrative law judge does not have jurisdiction to change it.

A Statement of Charges is appealable within 30 days of issuance where an employer did not receive notification of the claim, in which case the matter would be referred to an administrative law judge for a hearing on the claimant's eligibility for benefits. See Iowa Code 96.7(2)a(6). Here, a determination was already made on the claimant's eligibility for benefits, which is what resulted in the charges to the employer's account. Employer's appeal of that eligibility determination was not timely appealed and remains in force, meaning the resulting Statement of Charges remains in force as well.

DECISION:

The administrative law judge concludes the appeal was untimely. The decision dated May 25, 2021 (reference 01) that allowed benefits beginning March 14, 2021 based on a finding claimant was still employed and was able and available for work is therefore final and remains in force. The resulting Statement of Charges therefore remains in force as well.



Andrew B. Duffelmeyer
Administrative Law Judge

June 3, 2022
Decision Dated and Mailed

abd/abd