

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN R FUEHRER
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 22A-UI-04524-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

On February 8, 2022, Dawn Fuehrer (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 19, 2021 (reference 07) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on March 29, 2020 without a showing of good cause attributable to employer.

A telephone hearing was held on March 24, 2022. The parties were properly notified of the hearing. Claimant participated personally. Seaboard Triumph Foods LLC (employer/respondent) did not appear or participate.

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 March 19, 2021. That was claimant’s correct address at that time. Claimant did receive the decision. The decision states that it denies benefits and, if not reversed on appeal, may result in an overpayment claimant will be required to repay.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 29, 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 appeal the decision because she was confused as to whether it denied benefits prospectively or retroactively and was already working elsewhere. Claimant stopped filing for benefits approximately two months earlier, as she began work elsewhere at that time. Claimant was prompted to appeal when she received overpayment decisions in February 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 19, 2021 (reference 07) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on March 29, 2020 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 the decision in a timely manner and had a reasonable opportunity to appeal it. The administrative law judge is sympathetic to the circumstances and claimant's confusion regarding the decision. However, the decision is clear in that it denies benefits and may result in an overpayment unless it is reversed on appeal. It also clearly indicates a deadline for doing so. If claimant was confused as to the decision she should have contacted IWD to inquire further or gone ahead and appealed to preserve her rights. She instead chose to take no action.

The administrative law judge cannot find in the circumstances that there was a good cause reason for delay such that the appeal can be accepted as 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 March 19, 2021 (reference 07) that denied unemployment insurance benefits based on a finding that claimant voluntarily left employment on March 29, 2020 without a showing of good cause attributable to employer is therefore final and remains in force.



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

March 31, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

If 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 and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**