

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BRANDI L DYER**  
Claimant

**PRECISION RESISTIVE PRODUCTS INC**  
Employer

**APPEAL NO. 21A-UI-05741-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Brandi Dyer, filed a late appeal from the July 24, 2020 (reference 03) decision that denied benefits for the period beginning July 12, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and not available for work. After due notice was issued, a hearing was held on April 28, 2021. The claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-05735-JTT, 21A-UI-05739-JTT, and 21A-05743-JTT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: The KCCO, DBRO, KPYX, the July 14, 2020 (reference 01, 02 and 03) decisions, the December 14, 2020 (reference 04) decision, and the February 11, 2021 (reference 05) decision.

The administrative law judge left the hearing record open through April 30, 2021 to allow the claimant additional opportunity to submit bank records for the period of April 2020 through January 2021 in support of the claimant's assertion that she did not receive some of the benefits IWD documented as being disbursed to her. At 9:23 a.m. on April 28, 2021, the claimant sent an email message to the Appeals Bureau in which she stated she had conferred with her bank, had received two payments in May 2020 and had nothing else to submit. The claimant's correspondence was received into evidence as Exhibit B.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective April 12, 2020.

On July 24, 2020, Iowa Workforce Development mailed three decisions to the claimant at her Wapello, Iowa last-known address of record. The reference 01 decision denied benefits

effective April 12, 2020, based on the Agency determination that the claimant was not partially unemployed within the meaning of the law. The reference 02 decision denied benefits effective June 14, 2020, based on the Agency determination that the claimant was partially unemployed within the meaning of the law. The reference 03 decision denied benefits effective July 12, 2020, based on the Agency determination that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The claimant does not recall receiving the three decisions, but concedes she may have received the correspondence without opening and reviewing it. The weight of the evidence indicates the claimant received the decisions in a timely manner, prior to the deadline for appeal, but did not read or respond to the decisions. Each of the three disqualification decisions stated that the decision would be final unless an appeal was postmarked by August 3, 2020 or was received by the Appeals Bureau by that day. The claimant did not file an appeal from any of the three decisions by the August 3, 2020 appeal deadline or at any time prior to February 20, 2021.

On December 14, 2020, Iowa Workforce Development mailed the reference 04 decision to the claimant. The reference 04 decision allowed benefits for the period beginning November 22, 2020, provided the claimant was otherwise eligible, based on an Agency determination that the claimant was able to work available for work, but on a short-term layoff.

On February 11, 2021, Iowa Workforce Development mailed the reference 05 decision to the claimant. The reference 05 decision stated that the claimant was overpaid regular state benefits for four weeks between April 12, 2020 and January 2, 2021. The reference 05 decision erroneously stated that it was based on a February 10, 2021, decision. However, that was not the date of any of the disqualification decisions and was instead the day the overpayment decision would have been entered into the IWD computer system. The reference 05 decision stated that it was based on a decision that disqualified the claimant for benefits. The reference 05 decision stated that it would become final unless an appeal was postmarked by February 21, 2021 or was received by the Appeals Section by that date.

On February 20, 2021, the claimant completed and transmitted an online appeal from the reference 05 overpayment decision. The Appeals Section received the appeal on February 20, 2021 and treated it as also a late appeal from the three July 24, 2020 decisions that had denied benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit

pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The claimant's appeal from the July 24, 2020, reference 03, decision was untimely. The weight of the evidence establishes that the claimant received the decision in a timely manner, had an opportunity to file an appeal by the August 3, 2020 deadline, but did not review the decision and did not file an appeal by the appeal deadline. The claimant's initial assertion that she did not receive any of the three decisions mailed to her on July 24, 2020 was highly implausible. After that initial assertion, the claimant conceded that she may have received but did not open or read the decisions mailed to her on July 24, 2020. The claimant unreasonably delayed several months before filing an appeal from the decision and only filed the appeal after she received the

overpayment decision. The appeal was filed on February 20, 2021. The weight of the evidence establishes that the delay in filing the appeal was attributable to the claimant and not attributable to IWD or to the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the July 24, 2020, reference 03, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant appeal was untimely. The July 24, 2020 (reference 03) decision that denied benefits for the period beginning July 12, 2020, based on the deputy's conclusion that the claimant was not available for work, remains in effect.



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James E. Timberland  
Administrative Law Judge

May 3, 2021  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you may be required to repay the benefits you have received.**