

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA L HENNIE
Claimant

MASTERBRAND CABINETS INC
Employer

APPEAL 20A-UI-13937-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/5/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Amanda L. Hennie, filed an appeal from the June 16, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2021. The hearing was held together with Appeals 20A-UI-13938-JC-T and 20A-UI-13939-JC-T. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Is the claimant able to work and available for work effective April 5, 2020?

Is the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for this employer for seven years and is currently a full-time operator earning \$15.04 per hour.

Claimant established a claim for unemployment insurance benefits with an effective date of April 5, 2020 in response to employer notifying staff they were permitted to take a two-week leave of absence, unpaid, and voluntarily, if they had concerns related to the COVID-19 pandemic. Work was available if claimant had not taken the voluntarily leave of absence. Claimant’s leave of absence was April 6-20, 2020. She returned to work and on April 23, 2020, employer sent all

employees home due to COVID-19. Claimant was laid off work by due to a lack of work from April 23, 2020 through May 6, 2020:

An initial unemployment insurance decision (Reference 01) resulting in a denial of benefits was mailed to the claimant's last known address of record on June 16, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 26, 2020. She received the decision within the appeal period. At the time, claimant had returned to work and discontinued making claims so she did not file an appeal. Upon receiving the overpayment decision dated October 27, 2020, claimant filed an appeal via fax on November 3, 2020 (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant received the initial decision within

The administrative law judge concludes that failure to follow the clear written instructions 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). The administrative law judge further concludes that 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).

The administrative law judge recognizes the claimant has filed her current claim due to hardship related to the COVID-19 pandemic.

The issue of whether claimant was laid off due to a lack of work for the period of April 23-May 6, 2020 is remanded to the Benefits Bureau for an initial investigation and decision. (If claimant is found to be eligible for this period of time, her overpayment would be reduced also.)

DECISION:

The unemployment insurance decision dated June 16, 2020; (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issue of whether claimant was laid off due to a lack of work for the period of April 23-May 6, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 22, 2021
Decision Dated and Mailed

jlb/kmj

Note to Claimant: This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* 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, 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>.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>