

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABIGAIL OGREEN
Claimant

3RD STREET DEVELOPMENT LLC
Employer

APPEAL 21A-UI-01127-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

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

Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On December 9, 2020, Abigail Ogreen (claimant/appellant) filed an appeal from the October 29, 2020 (reference 01) unemployment insurance decision that denied benefits as of August 9, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on February 15, 2021. The parties were properly notified of the hearing. Claimant participated personally. 3rd Street Development, LLC (employer/respondent) did not register a number 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 October 29, 2020. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 8, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on December 9, 2020.

Claimant received the decision around October 31 or November 1, 2020. However, claimant did not read the decision closely and note the appeal deadline. She instead called the department several times in an attempt to speak to someone about the decision. Claimant eventually reached a department representative who informed her that she must appeal if she disagreed with the decision. Claimant did file an appeal at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. Because the appeal is not timely, the administrative law judge does not have jurisdiction to change the underlying decision. The October 29, 2020 (reference 01) unemployment insurance decision that denied benefits as of August 9, 2020 based on a finding claimant requested and was granted a leave of absence therefore 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."

Claimant received the decision in a timely manner. The decision clearly indicates it becomes final unless an appeal is taken by November 8, 2020. However, claimant did not read the decision closely and therefore was unaware of the appeal deadline until she spoke with a department representative approximately a month later. While the administrative law judge understands the failure to appeal in a timely manner was due to an inadvertency or oversight by claimant, that does not constitute good cause such that the appeal is timely. Claimant had a reasonable opportunity to assert an appeal in a timely manner but failed to do so. The administrative law judge therefore lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was untimely. Because the appeal is not timely, the administrative law judge does not have jurisdiction to change the underlying decision. The October 29, 2020 (reference 01) unemployment insurance decision that denied benefits as of August 9, 2020 based on a finding claimant requested and was granted a leave of absence therefore 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

February 26, 2021
Decision Dated and Mailed

abd/lj

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>.

