

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CECILIA A JALOMA LLOYD
Claimant

BOMGAARS SUPPLY INC
Employer

APPEAL 21A-UI-15714-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Ceilia A. Jalmoma-Lloyd, filed an appeal from the December 24, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2021. The claimant participated personally and was represented by Jeffrey Lipman, attorney at law. The employer, Bomgaars Supply Inc., notified the Appeals Bureau prior to the hearing that it would not be participating. .

The administrative law judge took official notice of the administrative records. Department Exhibit 1 and Claimant Exhibits A and B were admitted into evidence. 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?

Was the claimant able to work and available for work effective October 5, 2020?

Was 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: Claimant established her claim for unemployment insurance benefits with an effective date of October 25, 2020. Claimant last performed work as full-time cashier in October 2020 and permanently separated from employment effective April 13, 2021. The issue of claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

In July 2020, claimant injured her knee. Claimant last performed work around October 25, 2020, when she brought her employer medical restrictions from her personal doctor, which included an opportunity to sit between cashier transactions. The employer sent the claimant

home stating it would not accommodate her restrictions. Employer initially told claimant she would be furnished FMLA paperwork but she never received it. On December 15, 2020, claimant had knee surgery. At the hearing, claimant indicated she is not healthy enough to return to work. Claimant did not present evidence of a release to return to work from her doctor, with or without restrictions.

An initial decision (reference 01) was mailed to the claimant/appellant's address of record on December 24, 2020. The decision contained a warning that an appeal must be filed by January 3, 2021. The decision also directed the appellant to call the customer service line for assistance. At a December 22, 2020 fact-finding interview, claimant notified the IWD Deputy she was not pursuing unemployment insurance benefits at the time and to cancel the claim. However, pursuant to Iowa Code § 96.6(1), Iowa Admin. Code r. 871-24.2(4)d(1) and Iowa Admin. Code r. 871-24.2(4)c, claimant did not make a timely request to cancel her claim or follow IWD procedure for cancelling the claim.

Claimant did receive the initial decision dated two days after the fact-finding interview but did not contact IWD about the effect it would have if she believed her claim had been cancelled. Claimant didn't think the initial decision applied to her.

On May 2, 2021, claimant established an additional claim for unemployment insurance benefits. On May 24, 2021, she learned in a call when calling an IWD representative that her claim had not been cancelled and she was unable to receive unemployment insurance benefits because of the outstanding initial decision. Appellant filed the appeal on July 14, 2021 (See Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits insures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's circumstances to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

The next issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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 administrative law judge has carefully considered the evidence presented, and concludes that even if claimant had been given incomplete or inaccurate information regarding her claim cancellation by an IWD representative on a December 22, 2020 fact-finding interview, that claimant was aware effective May 24, 2020 that her claim had not been cancelled and the December 24, 2020 decision was preventing her from receiving unemployment insurance benefits. Claimant delayed filing her appeal approximately seven more weeks until July 14, 2021. The administrative law judge is not persuaded that the delay from May 24, 2021 until July 14, 2021 was reasonable. See Iowa Admin. Code r. 871-24.35(2) or that the delay from May 24, 2021 until July 14, 2021 was *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 issues of claimant's permanent separation from employment effective April 13, 2021 and whether claimant has been able and available for work since April 13, 2021 are remanded to the Benefits Bureau for review.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the

parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated December 24, 2020, (reference 01) is affirmed. The claimant did not file a timely appeal and it is dismissed.

REMAND:

The issues of claimant's permanent separation from employment effective April 13, 2021 and whether claimant has been able and available for work since April 13, 2021 are remanded to the Benefits Bureau for review.



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

September 24, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance 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

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

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>