

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY DIE
Claimant

HOLY SPIRIT RETIREMENT HOME
Employer

APPEAL 21A-UI-23243-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 19, 2021, Stacy Die (claimant) filed an appeal from the October 23, 2020, reference 01, unemployment insurance decision that denied benefits effective May 17, 2020, based upon the determination she was on an approved leave of absence from Holy Spirit Retirement Home (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on December 28, 2021, and consolidated with the hearings for appeals for 21A-UI-23244-SC-T, 21A-UI-23245-SC-T, 21A-UI-23246-SC-T, and 21A-UI-23247-SC-T. The claimant participated personally, and she was represented by Bryan Schusterman, Attorney at Law. The employer participated through Arelly Lugo, HR Director, and Kyla Sprakel, Executive Director. The employer's Exhibit 1 was admitted into the record over the claimant's objection to relevance. The department's Exhibits D1A, D1B, and D2 were admitted into the record without objection. The administrative law judge took official notice of the administrative record, specifically the claimant's Pandemic Unemployment Assistance (PUA) claim and her claim payment history.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 23, 2020, Iowa Workforce Development (agency) mailed a disqualification decision to the claimant's last known address of record. She received the decision within ten days and stopped filing for regular unemployment insurance benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 2, 2020. The appeal was not filed until October 19, 2021, which is after the date noticed on the

disqualification decision, because instead of filing an appeal, the claimant contacted the agency and filed for PUA.

The claimant's last day worked for the employer was May 6, 2020. She filed for PUA on November 5, and she was granted PUA benefits effective October 5. The agency mailed the decision granting PUA benefits to the claimant on November 5 and warned her an appeal must be filed by November 16, 2020. The claimant did not appeal the decision.

The claimant's maximum PUA benefit is \$24,850.00. She has received \$12,070.00 in PUA benefits for the weeks 34 weeks between October 18, 2020 and June 12, 2021, when the state of Iowa was no longer authorized to disburse PUA benefits. Whether the claimant should be approved for PUA prior to October 18, 2020 based on the last day of employment and this denial of regular unemployment insurance benefits needs to be reviewed by the Benefits Bureau.

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. Bd. 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 filed the appeal after the deadline. She has not established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, 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).

Whether the claimant is eligible for PUA prior to October 18, 2020, is remanded to the Benefits Bureau for review and determination.

DECISION:

The October 23, 2020, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative denying regular unemployment insurance benefits remains in effect.

REMAND:

Whether the claimant is eligible for PUA prior to October 18, 2020, is remanded to the Benefits Bureau for review and a decision mailed to the claimant with appeal rights.



Stephanie R. Callahan
Administrative Law Judge

January 3, 2022

Decision Dated and Mailed

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