

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY J PINS
Claimant

IOWA CATHOLIC CONFERENCE
Employer

APPEAL 22A-UI-09242-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2R)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(5) – Eligibility – Between Academic Years

STATEMENT OF THE CASE:

Timothy Pins (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 9, 2021 (reference 01) that denied unemployment insurance benefits as of May 31, 2020 based on a finding claimant was an employee of an educational institution assigned to instruction, research, or administration and was unemployed between academic years or terms.

A telephone hearing was held on May 27, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-09242, 22A-UI-09243, 22A-UI-09246, 22A-UI-09247, 22A-UI-09248, and 22A-UI-09249 are related and were heard together, forming a single hearing record. Claimant participated personally. His wife, Mary Pins, also participated. Hearing Rep. Paul Jahnke participated on behalf of employer/respondent Iowa Catholic Conference for purposes of 22A-UI-09242 and Dyersville-Beckman for purposes of 22A-UI-09243.

Claimant’s Exhibit 1 was admitted into evidence. No other exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Did claimant perform work for employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant has not been an employee of employer. Employer is the parent entity of the employer Dyersville-Beckman, for which claimant did perform work and earn wages. Claimant’s eligibility for benefits related to that entity is addressed in 22A-UI-09423.

The Unemployment Insurance Decision was mailed to claimant at the above address on March 9, 2021. That was claimant’s correct address at that time. Claimant did receive the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received

by Iowa Workforce Development Appeals Section by March 19, 2021. 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 or about March 12, 2021.

The delay in appealing was due to department error. The administrative law judge finds claimant did properly submit an appeal on or about March 12, 2021. It is unclear why a hearing was not set at that time. Claimant appealed subsequent decisions finding he was overpaid unemployment insurance benefits. Appeals Bureau staff set up an appeal of this matter at that same time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated March 9, 2021 (reference 01) that denied unemployment insurance benefits as of May 31, 2020 based on a finding claimant was an employee of an educational institution assigned to instruction, research, or administration and was unemployed between academic years or terms is REVERSED without prejudice to either party.

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."

The delay in appealing was due to department error. Claimant credibly testified and the administrative law judge finds claimant did properly submit an appeal on March 12, 2021. It is unclear why a hearing was not set at that time. The administrative law judge therefore finds the appeal is timely and he has jurisdiction to address the underlying issues.

Claimant has not been an employee of employer. As such no denial of benefits is imposed with regard to this employer and employer's account shall not be charged for benefits paid. As noted above, claimant's eligibility for benefits related to his employment with the related entity Dyersville-Beckman is addressed in 22A-UI-09423.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 9, 2021 (reference 01) that denied unemployment insurance benefits as of May 31, 2020 based on a finding claimant was an employee of an educational institution assigned to instruction, research, or administration and was unemployed between academic years or terms is REVERSED without prejudice to either party. No denial of benefits is imposed with regard to this employer and the employer's account shall not be charged for benefits paid.

REMAND:

This matter is remanded to the Tax Bureau of IWD for any further action consistent with this decision that it deems appropriate.



Andrew B. Duffelmeyer
Administrative Law Judge

July 7, 2022
Decision Dated and Mailed

abd/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.