

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COLLEEN S MCGINNIS

Claimant

APPEAL NO. 22A-UI-07356-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART ASSOCIATES

Employer

OC: 04/26/20

Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 19, 2022, Colleen McGinnis (claimant) filed a late appeal from the March 23, 2021 (reference 01) decision that denied benefits effective April 26, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on May 9, 2022. Claimant participated. Rachel Baehler represented the employer. There were three appeal numbers set for a consolidated hearing: 22A-UI-07356-JT-T, 22A-UI-07358-JT-T, and 22A-UI-07359-JT-T. Exhibits A through F were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, DBIN, KPYX, and KCCO. The administrative law judge also took official notice that there was no scheduled fact-finding interview (KFFV). The administrative law judge took official notice that there were not fact-finding materials scanned into the Agency's records. The administrative law judge also took official notice that the claimant did not apply for and was not approved for Pandemic Unemployment Assistance (PUA) benefits.

ISSUE:

Whether the appeal was timely.

Whether there is good cause to treat the appeal as timely.

Whether the claimant was able to work and available for work during the 13 weeks between April 26, 2020 and July 25, 2020.

Whether the claimant was temporarily or partially unemployed during the 13 weeks between April 26, 2020 and July 25, 2020.

Whether the employer's account may be charged for benefits for the period of April 26, 2020 and July 25, 2020.

FINDINGS OF FACT:

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

The claimant established an original claim for benefits that was effective April 26, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$211.00. The

claimant requested that federal and state taxes be withheld from benefits. The claimant erroneously concluded that the monetary record (green paper) was a decision approving unemployment insurance benefits. The claimant made weekly claims for each of the 13 weeks between April 26, 2020 and July 25, 2020. The claimant received \$211.00 in regular state benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the 13 weeks in question. The regular benefits paid to the claimant totaled \$2,743.00. The FPUC benefits paid to the claimant totaled \$7,800.00.

At the time the claimant established her claim for benefits, the claimant was employed by Walmart Associates as a full-time cashier at the Walmart store in Clinton. Until the end of March 2020, the claimant generally worked 35 to 40 hours a week. The claimant's wage during at the period was \$11.44 an hour.

Prior to establishing the unemployment insurance claim, the claimant elected to commence a COVID-19 related leave of absence from the Walmart employment. The claimant applied for the leave of absence by contacting the employer's third-party leave administrator, Sedgewick. The claimant commenced the leave of absence out of concern that her personal health issues placed her at increased risk in the context of the COVID-19. The claimant's health issues included diabetes, high blood pressure, fatty liver, a history of neck issues that included a surgery, and cardiovascular issues. The claimant's decision to go off work was not based on advice from a licensed and practicing physician. Though the claimant did not consult a doctor prior to going off work, the claimant subsequently consulted her doctor, who affirmed the soundness of the claimant's decision to go of work during the COVID-19 pandemic. The claimant was also concerned about exposing her husband to COVID-19 in light of her husband's health issues, which include diabetes and cardiovascular issues.

At the time the claimant went off work, Walmart has taken some preliminary precautions to slow the spread of COVID-19. These included requesting that customers wear a mask. However, Walmart had not yet installed Plexiglas protective screens at the checkout lanes and experienced a scarcity of hand sanitizer. The claimant's cashiering duties brought the claimant into regular direct contact with customers.

During the 13-week period when the claimant was making weekly claims and for which the claimant received benefits, Walmart continued to have the same full-time employment for the claimant. The claimant elected to remain off work throughout that period. On June 19, 2020, the employer paid the claimant a \$300.00 COVID-19 bonus. The claimant otherwise earned not wages and received no compensation from the employer during the period of April 26, 2020 through July 25, 2020.

The claimant did not apply for and was not approved for Pandemic Unemployment Assistance (PUA).

During the 13 weeks involved in the claim for benefits, Iowa Workforce Development waived work search requirements. In any event, because the claimant was attached to employer during that period, the claimant would not have been subject to the work search requirement.

On March 23, 2021, Iowa Workforce Development mailed the March 23, 2021 (reference 01) decision to the claimant's Thomson, Illinois last-known address of record. The reference 01 decision denied benefits effective April 26, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. The reference 01 stated that the decision would become final unless an appeal was postmarked by April 2, 2021 or was received by the Appeals Section by that date. The reference 01 decision did not follow a

scheduled fact-finding interview. The claimant denies an IWD representative contacted her for information prior to issuing the reference 01 decision. The claimant did not receive the reference 01 decision that was mailed to the claimant on March 23, 2021. The claimant was unaware of the April 2, 2021 appeal deadline date and, therefore, did not file an appeal by that date. The claimant continued to be unaware of the reference 01 decision until the claimant received overpayment decisions that IWD mailed to the claimant on March 14 and 15, 2022. Both overpayment decisions referenced the earlier decision that denied benefits. On March 19, 2022, the claimant drafted and mailed an appeal from the overpayment decision. The appeal is postmarked March 19, 2020. The Appeals Bureau received the appeal on March 21, 2022 and treated it as also a late appeal from the reference 01 decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

There is good cause to treat the claimant's March 19, 2022 appeal as a timely appeal from the March 23, 2021 (reference 01) decision. The claimant did not receive the decision, was unaware of the applicable appeal deadline, learned of the decision when she received the March 14 and 15, 2022 overpayment decisions, and promptly filed an appeal on March 19, 2022. The late filing of the appeal is attributable to the United States Postal Service not delivering the reference 01 decision to the claimant. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was timely, administrative law judge has jurisdiction to enter a ruling on the substantive issues addressed in the reference 01 decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was not available for work within the meaning of the law during the period of April 26, 2020 through July 25, 2020. The claimant requested a leave of absence and the employer's agent approved a leave of absence for that period. The claimant was not temporarily or partially unemployed within the meaning of the law during the period of April 26, 2020 through July 25, 2020. During that period, the employer continued to have the claimant's full-time employment available for the claimant. The claimant is not eligible for regular state benefits for the period of April 26, 2020 through August 25, 2020. The employer's account will not be charged for benefits for that period.

DECISION:

There is good cause to treat the claimant's late appeal from the March 23, 2021 (reference 01) decision as a timely appeal. The reference 01 decision is MODIFIED as follows. The claimant was not available for work within the meaning of the law during the period of April 26, 2020 through July 25, 2020. The claimant was not temporarily or partially unemployed within the meaning of the law during the period of April 26, 2020 through July 25, 2020. The claimant is not eligible for regular state benefits for the period of April 26, 2020 through August 25, 2020. The employer's account will not be charged for benefits for that period.



James E. Timberland
Administrative Law Judge

May 26, 2022
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment **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.

Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed between February 2, 2020 and June 12, 2021 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>

[Pandemic Unemployment Assistance | Iowa Workforce Development](https://www.iowaworkforcedevelopment.gov/pua-information)

Provides temporary income to eligible individuals who became unemployed as a result of the novel COVID-19 pandemic and are either self-employed, do not have sufficient work history to be eligible for a claim, or have exhausted other forms of unemployment insurance benefits. It is funded by the federal government, not by state unemployment taxes paid by employers.

www.iowaworkforcedevelopment.gov

The authorization code is 107356, the pin number you used for the appeal hearing. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.