

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MEGAN K WILKENING**  
Claimant

**ANKENY COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 21A-UI-02414-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On December 30, 2020, Megan Wilkening (claimant/appellant) filed an appeal from the May 13, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant was not partially unemployed.

A telephone hearing was held on March 5, 2021. The parties were properly notified of the hearing. Claimant participated personally. Ankeny Community School Dist (employer/respondent) participated by Chief HR Officer Jessica Dirks.

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 May 13, 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 May 23, 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 did not appeal until December 30, 2020.

Claimant received the decision in a timely manner. Claimant did not appeal because she wished to speak with a department representative to ask about appealing and had difficulty getting through to a representative via phone. The decision clearly explains how to file an appeal. An appeal can be filed online, by fax, or by mail.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The May 13, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 therefore remains in force and effect.

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 administrative law judge finds claimant had a reasonable opportunity to appeal it in a timely manner but failed to do so. She has not shown a good cause reason for failing to do so. As such,

the appeal is untimely; the decision appealed has become final; and the administrative law judge lacks jurisdiction to change it. The decision therefore remains in force and effect.

It is understandable that claimant wished to speak with a department representative about her claim and the decision. It is also understandable that claimant had difficulty reaching a representative. However, that does not explain why she delayed appealing for approximately seven months. Claimant received the decision in a timely manner and the decision clearly explains how to file an appeal online, by fax, or by mail.

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The May 13, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 15, 2020 therefore remains in force and effect.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

March 11, 2021  
Decision Dated and Mailed

abd/mh

**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>.