

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA R MONAHAN
Claimant

AMERICAN SPIRIT CORPORATION
Employer

APPEAL 22A-UI-11087-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On May 2, 2022, Cynthia Monahan (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated November 1, 2021 (reference 02) that denied unemployment insurance benefits as of September 12, 2021 based on a finding claimant was still employed in an on-call job.

A telephone hearing was held on June 16, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-11086, 22A-UI-11087, 22A-UI-11088, 22A-UI-11089, and 22A-UI-11090 are related and were heard together, forming a single hearing record. Claimant participated personally. American Spirit Corporation (employer/respondent) participated by Human Resources Manager Shelly Dollar. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer on August 10, 2020. She was initially employed as a full-time machine operator. She requested for personal reasons to move to a part-time position beginning September 13, 2021. Claimant resigned for personal reasons on September 27, 2021. Specifically, claimant resigned due to a lack of childcare.

Claimant filed a claim for benefits with an effective date of September 12, 2021. She filed weekly continued claims through the week ending September 25, 2021. During these weeks claimant reduced her availability for work by moving to a part-time position and was unable to or unavailable for work due to being ill, her children being ill, and not having adequate arrangements for childcare.

The Unemployment Insurance Decision was mailed to claimant at the address 1245 SE UNIVERSITY APT 22 WAUKEE IA 50263 on November 1, 2021. That was not claimant's correct address at that time. Specifically, it is not the correct apartment number. Claimant did not receive the decision. The delay in appealing was for this reason. Claimant appealed after receiving an April 26, 2022 decision finding she was overpaid benefits. When it received that appeal the appeals bureau set up a hearing on this decision denying benefits as well as the decision finding claimant was overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated November 1, 2021 (reference 02) that denied unemployment insurance benefits as of September 12, 2021 based on a finding claimant was still employed in an on-call job is MODIFIED with no change in 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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4 provides in relevant part:

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".

The administrative law judge finds claimant has not met her burden of proving she met the eligibility requirements for benefits during the weeks filed, from September 12 through September 25, 2021. The evidence shows that during these weeks claimant reduced her availability for work by moving to a part-time position and was unable to or unavailable for work due to being ill, her children being ill, and not having adequate arrangements for childcare. Benefits are therefore denied during those weeks. The decision is modified to reflect claimant is ineligible for the above reasons rather than due to being still employed in an on-call job.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated November 1, 2021 (reference 02) that denied unemployment insurance benefits as of September 12, 2021 based on a finding claimant was still employed in an on-call job is MODIFIED with no change in effect. The decision is modified to reflect that benefits are denied based on claimant failing to meet the ability and availability requirements in the weeks filed.



Andrew B. Duffelmeyer
Administrative Law Judge

June 23, 2022
Decision Dated and Mailed

abd/abd