

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALVIN H MCINTYRE
Claimant

MIDWEST JANITORIAL SERVICE INC
Employer

APPEAL 21A-UI-21985-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/28/21
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

On October 5, 2021, Alvin McIntyre (claimant/appellant) filed an appeal from the decision dated June 18, 2021 (reference 02) that denied unemployment insurance benefits as of March 28, 2021 based on a finding that claimant was unable to perform work due to illness.

A telephone hearing was held on November 30, 2021. The parties were properly notified of the hearing. Claimant participated personally. Midwest Janitorial Service Inc (employer/respondent) participated by Director of Administration Erin Decker.

Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant has worked for employer part-time since 2019. He filed a claim for benefits each week from the benefit week ending April 3, 2021 through the benefit week ending June 12, 2021. He was unable to work the majority of the weeks ending April 3 and June 12, 2021 due to illness. He was employed by employer as usual during the other weeks filed. He was searching for work elsewhere during this time, as he had recently lost his main job.

Claimant does not recall receiving the June 18, 2021 decision denying benefits. He was unaware there was an issue with his claim until he received overpayment decisions several months later. He appealed at that 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 June 18, 2021 (reference 02) that denied unemployment insurance benefits as of March 28, 2021 based on a finding that claimant was unable to perform work due to illness is MODIFIED in favor of appellant. He is eligible for benefits as set forth below. Employer's account shall not be charged.

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 indicates claimant did not receive the decision denying benefits. 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(3) provides:

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

3. 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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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 was able and available for work and working for employer as usual during each week filed except for the weeks ending April 3, and June 12, 2021. He is eligible for benefits in each week filed except those two, when he was unable to work due to illness. Because claimant was receiving the same employment from employer during the weeks filed, employer shall not be charged for benefits paid.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated June 18, 2021 (reference 02) that denied unemployment insurance benefits as of March 28, 2021 based on a finding that claimant was unable to perform work due to illness is MODIFIED in favor of appellant. He is eligible for benefits as set forth above. Employer's account shall not be charged.



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

December 8, 2021
Decision Dated and Mailed

abd/abd

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>.