

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM TAYLOR
Claimant

KEVIN RYAN
Employer

APPEAL 20A-UI-03400-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Respondent (4)

Iowa Code § 96.19(18)a Definitions – Employment
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 15, 2020, Kevin Ryan (employer/appellant) filed an appeal from the March 31, 2020 (reference 01) unemployment insurance decision that determined William Taylor (claimant/respondent) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 20, 2020. The parties were properly notified of the hearing. Employer participated by Managing Director Kevin Ryan. Claimant did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Did the claimant work for employer as an employee?
- III. Was the separation a layoff, a discharge for misconduct, or a voluntary quit without good cause?
- IV. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to employer at the above address in Kentucky on March 31, 2020. That was the correct address for the employer at that time. However, the decision was not received until on or about April 12, 2020, after the deadline for appealing had already passed. Employer's CFO made Ryan aware of the decision on April 14, 2020, and Ryan prepared an appeal at that time. The appeal was mailed April 15, 2020.

Claimant worked as an advisor for a Northwestern Mutual branch. Advisors are contracted to Ryan by Northwestern but are not employees. While Ryan provides resources and conducts team meetings and coaching sessions every week or so, claimant and other advisors do not report to him and Ryan does not direct their day to day operations. Claimant did not have paid leave or other benefits, nor did he have a set schedule, Claimant was considered an independent contractor and was paid via a 1099. Claimant and Ryan mutually agreed to end his contract on or about February 28, 2020.

Claimant has filed claims for benefits from the benefit week ending March 14, 2020 and continuing through the benefit week ending May 2, 2020. However, benefits have not been paid to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the March 31, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is MODIFIED in favor of appellant. The administrative law judge finds the appeal is timely. The administrative law judge further concludes the claimant's employment was not covered employment. Therefore, the issue of the separation is moot and benefits are allowed, provided the claimant is otherwise eligible. The employer shall not be charged.

I. Is the appeal timely?

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 employer did not receive the decision until after the deadline to appeal had passed. The employer acted with reasonable diligence to appeal the decision after receiving it. Because the employer was deprived of a reasonable opportunity to assert the appeal in a timely fashion and then acted with reasonable diligence to appeal the decision after becoming aware of it, the administrative law judge finds the appeal is timely.

II. Did the claimant work for employer as an employee?

Iowa Code section 96.19(18)g(9)a, b provides:

18. "Employment".

g. The term "employment" shall not include:

(9) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling

or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

Iowa Code section 96.19(18)a provides in relevant part:

18. "Employment".

- a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by: . . .

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

The administrative law judge finds claimant is not an employee of employer. Claimant does not perform services for employer for wages or under a contract of hire. Claimant worked as an advisor for a Northwestern Mutual branch. Advisors are contracted to Ryan by Northwestern but are not employees. Claimant was considered an independent contractor and was paid via a 1099 rather than a W2.

Furthermore, claimant does not have the status of employee under the usual common-law rules applicable in determining the employer-employee relationship. While Ryan provided resources and conducted team meetings and coaching sessions for claimant and other advisors every week or so, claimant and other advisors do not report to him. Claimant did not have paid leave or other benefits; he did not have a set schedule; and Ryan did not direct his day to day operations. In short, the usual trappings of an employer-employee relationship are not present here. Claimant's relationship with employer here is more akin to that of a salesman or real estate agent, which is not considered covered employment under applicable law.

Because claimant was not an employee of employer, the end of his relationship with employer cannot be disqualifying for purposes of eligibility for unemployment insurance benefits. Accordingly, the issue of whether the claimant's separation from this employer disqualifies him for benefits is moot. Benefits are allowed, provided the claimant is otherwise eligible. However, this employer shall not be charged for any benefits paid.

The issue of overpayment of benefits need not be addressed, as claimant has not received benefits to date.

DECISION:

The March 31, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is MODIFIED in favor of appellant. The administrative law judge finds the appeal is timely. The administrative law judge further concludes the claimant's employment was not covered employment. Therefore, the issue of the separation is moot and benefits are allowed, provided the claimant is otherwise eligible. The employer 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

May 26, 2020
Decision Dated and Mailed

abd/mh