

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAREN E MILLS

Claimant

VENUWORKS OF CEDAR RAPIDS LLC

Employer

APPEAL NO. 21A-UI-08753-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (1R)

Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 5, 2021, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on June 11, 2021. The claimant did participate and was represented by council Emily Schott. The employer did participate through Sean Meloy. Claimant's Exhibits A-H were admitted to the record.

ISSUES:

Whether the appeal is timely?

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on March 5, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 15, 2021. The appeal was not filed until March 29, 2021, which is after the date noticed on the disqualification decision. Claimant stated that she was confused as a result of all of the different documentation received from IWD. (Claimant works as a union stagehand and shows up to 10 different employers in a given quarter.) Claimant stated that she did not receive the decision until there were only approximately three days left to file an appeal and she had a very busy week. She did finally file an appeal after she received two overpayment matters which resulted from a separate denial of benefits.

Claimant works for employer as a stagehand when employer has events at its venue. When employer has events, it contacts the local union and the union then contacts claimant and other union workers who then decide if they will work the job. Claimant's hours vary greatly as the jobs may be bunched over a short period of time or may be spread out with no work for extended periods. Claimant was not contacted to work for employer for the months of April through July and really began working again in September. During the eight week period of the week ending May 2 through June 20 claimant did not work for employer but was paid \$299.00 / week by employer through the PPP program.

It is noted that claimant was granted PUA benefits effective March 15, 2020 on November 24, 2020. This covered the entire period claimant filed for state unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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). The 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

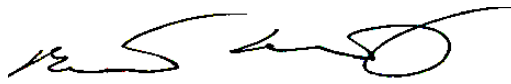
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa

Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The March 5, 2021, reference 03 , decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

This matter is remanded to the benefits bureau such that any calculations made in this matter be made in light of claimant's award of PUA benefits effective March 15, 2020.



Blair A. Bennett
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

bab/scn