

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARRIE M MASTELLER
Claimant

IOWAWORKS

APPEAL 19A-UI-08074-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able to and Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.6 – Profiling for reemployment services
Iowa Admin. Code r. 871-24.2(1)e – Procedures for workers desiring to file a claim for benefits
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 4, 2019 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she failed to participate in a reemployment and eligibility assessment. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2019. The claimant, Carrie M. Masteller, participated personally. Stacy Perkins participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 – 3 were admitted.

ISSUES:

Did claimant file a timely appeal?

FINDINGS OF FACT:

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

The claimant filed an initial claim for unemployment insurance benefits with an effective date of April 21, 2019. Claimant was selected to participate in a reemployment and eligibility assessment on May 31, 2019. See Exhibit 1. A notice was mailed to the claimant on May 21, 2019. See Exhibit 1. The notice stated, “failure to appear on the date and time listed below WILL result in the denial of unemployment insurance benefits”. See Exhibit 1. Claimant began working again full-time in May of 2019. Claimant did not attend the assessment and her claim was locked due to her failure to attend.

A decision denying her benefits effective May 26, 2019 and continuing until she reported for the assessment was mailed to her on June 4, 2019 (reference 02). An appeal deadline of June 14, 2019 was listed on the decision. Claimant does not remember receiving the decision in the mail

but stated that it was possible she disregarded the decision because she was back to work full-time. The decision was mailed to the correct address of record.

Claimant became unemployed again and filed an additional claim effective September 22, 2019. Claimant filed an appeal of the June 4, 2019 (reference 02) decision on October 17, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did not file a timely appeal.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant credibly testified that she does not remember receiving the decision in the mail but it was possible she disregarded it because she was back to work full-time. Claimant has not shown any good cause for failure to comply with the jurisdictional time limit to file an appeal or that the delay was due to any agency error or agency misinformation. Iowa Admin. Code r. 871-24.35(2). The claimant has not shown that there was any delay or other action of the United States Postal Service that would establish good cause for her late appeal filing. *Id.* Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

DECISION:

The June 4, 2019 (reference 02) unemployment insurance decision is affirmed. Claimant has failed to file a timely appeal and the unemployment insurance decision shall stand and remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn