

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT M BARNES

Claimant

APPEAL 22A-UI-06926-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MARION INDEPENDENT SCHOOL
DISTRICT**

Employer

OC: 03/15/20

Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Code § 96.19(38) – Total, partial, temporary unemployment

Iowa Admin. Code r. 871-24.52(10) – Substitute Teacher

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.4(5) – Eligibility – Between Academic Years or Terms

Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On March 14, 2022, Robert Barnes (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated May 7, 2021 (reference 05) that denied unemployment insurance benefits as of September 6, 2020 based on a finding that claimant was still employed in an on-call job.

A telephone hearing was held on May 4, 2022. The parties were properly notified of the hearing. Claimant participated personally. His wife, Carolyn Barnes, participated as witness. Marion Independent School District (employer/respondent) participated by Business Manager Christie Van Wey.

Appeal Nos. 22A-UI-06923-AD-T, 22A-UI-06926-AD-T, 22A-UI-06940-AD-T, 22A-UI-06928-AD-T, 22A-UI-06932-AD-T, 22A-UI-06934-AD-T, and 22A-UI-06936-AD-T were heard concurrently. Official notice is taken of the record in two other related matters, 22A-UI-06942-AD-T and 22A-UI-06944-AD-T.

Claimant’s Exhibits 1-4 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on May 7, 2021. That was claimant's correct address at that time. Claimant did receive the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 17, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant filed an appeal from another matter, a denial of Pandemic Unemployment Assistance (PUA), on June 2, 2021. See 21A-DUA-01579-AW-T. Claimant believes he unsuccessfully attempted to appeal earlier than that but is unsure when and if it was an appeal of this matter. The first record of an appeal of this matter is on March 12, 2022. Claimant was prompted to appeal when overpayment decisions were issued on March 4, 2022.

Claimant was allowed PUA effective August 16, 2020 and continuing through June 5, 2021 in 21A-DUA-01579-AW-T. That decision was issued on July 29, 2021. It does not appear PUA or related benefits have issued to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated May 7, 2021 (reference 05) that denied unemployment insurance benefits as of September 6, 2020 based on a finding that claimant was still employed in an on-call job is therefore final and remains in force.

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 administrative law judge finds claimant received the decision in a timely manner and had a reasonable opportunity to file a timely appeal but failed to do so. A good cause reason for delay in appealing has not been established and the administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated May 7, 2021 (reference 05) that denied unemployment insurance benefits as of September 6, 2020 based on a finding that claimant was still employed in an on-call job is therefore final and remains in force.

REMAND:

Claimant was allowed PUA effective August 16, 2020 and continuing through June 5, 2021 in 21A-DUA-01579-AW-T. That decision was issued on July 29, 2021. It does not appear PUA or related benefits have issued to date. This matter is REMANDED for immediate issuance of PUA and related benefits due to claimant. The Department may use those benefits due to offset any existing overpayments to the extent allowed by law. The remainder shall be issued to claimant.



Andrew B. Duffelmeyer
Administrative Law Judge

May 9, 2022
Decision Dated and Mailed

abd/abd