

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBORA CORNWELL
Claimant

APPEAL NO. 21A-UI-09300-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARKING INC
Employer

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Debora Cornwell, filed a late appeal from the December 31, 2019 (reference 02, o.c. 12/01/19), decision that denied benefits *effective December 1, 2019*, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 17, 2021. Claimant participated. Will Hays represented the employer. There were five appeal numbers set for a consolidated hearing: 21A-UI-09299-JTT, 21A-UI-09300-JTT, 21A-UI-09301-JTT, 21A-UI-09303-JTT and 21A-UI-09304-JTT. Exhibits A through J were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, NMRO, WAGE-A, the December 31, 2019 (reference 02, o.c. 11/29/20) decision and associated fact-finding materials, the January 2, 2020 (reference 03, o.c. 11/29/20) decision and associated fact-finding materials, and the reference 01 (o.c. 11/29/20) fact-finding materials.

ISSUE:

Whether the claimant's appeal from the December 31, 2019 (reference 02) decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 31, 2019, Iowa Workforce Development mailed the December 31, 2019 (reference 02, o.c. 12/1/19) decision to the claimant at her Grimes last-known address of record. The address of record is a United States Postal Service post office box in Grimes. The reference 02 decision denied benefits *effective December 1, 2019*, based on the deputy's conclusion that the claimant was not partially unemployed from Parking, Inc. within the meaning of the law. The decision stated that the decision would be final unless an appeal was postmarked by January 10, 2020 or was received by the Appeal Section by that date. The claimant received the reference 02 decision in a timely manner, prior to the January 10, 2020 deadline for appeal. The claimant did not take steps to file an appeal from the reference 02 decision by the January 10, 2020 deadline or at any point prior to March 29, 2021.

On January 2, 2020, Iowa Workforce Development mailed a January 2, 2020 (reference 03, o.c. 12/1/19) decision to the claimant. The reference 03 decision allowed benefits beginning December 1, 2019, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was available for work with employer Kinseth Hotel Corporation, but was not receiving the same employment from Kinseth as in the base period.

On May 14, 2020, Iowa Workforce Development mailed a reference 99 notice/decision to the claimant regarding Federal Pandemic Unemployment Compensation (FPUC). The reference 99 decision advised the claimant that she was eligible for \$600.00 in FPUC benefits for any week between March 29, 2020 and July 25, 2020 for which she was deemed eligible for regular benefits or for one of the state or federal substitutes for regular benefits. The reference 99 decision also advised that if the claimant was deemed ineligible for regular benefits or one of the substitutes of regular benefits and if she was deemed to be overpaid benefits, then the FPUC benefits for that week would also be deemed an overpayment of benefits.

On January 4, 2021, Iowa Workforce Development mailed the January 4, 2021 (reference 02, o.c. 11/29/20) decision to the claimant. The reference 02 decision allowed benefits to the claimant *effective November 29, 2020*, provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant was available for work with Kinseth Hotel Corporation, but that the employer was not providing the same employment as in the base period.

On January 6, 2021, Iowa Workforce Development mailed three overpayment decisions to the claimant. The reference 04 (o.c. 12/1/19) decision held the claimant was overpaid \$5,983.00 in regular benefits for 38 weeks between December 1, 2019 and November 28, 2020, due to the December 31, 2019 (o.c. 12/1/19) decision that disqualified the claimant for benefits based on an availability determination. The reference 05 (o.c. 12/1/19) decision held the claimant was overpaid \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for 17 weeks between March 29, 2020 and July 25, 2020, due to the reference 02 (o.c. 12/1/19) that held the claimant was still employed same hours and wages with Parking, Inc. The reference 06 (o.c. 12/1/19) decision held the claimant was overpaid \$1,800.00 in Lost Wages Assistance Payments (LWAP) for six weeks between July 26, 2020 and September 5, 2020, due to the reference 02 (o.c. 12/1/19) decision that stated the claimant was still employed same hours and wages with Parking, Inc. The claimant received the reference 04, 05 and 06 decisions in a timely manner, prior to the deadline for appeal. The reference 04, 05 and 06 decisions each stated that the decision would be final unless an appeal was postmarked by *January 16, 2021*. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. January 16, 2021 was a Saturday and the next working day was Tuesday, January 19, 2021. The claimant did not take steps to file an appeal from the reference 04, 05 or 06 decision by the **January 19, 2021** extended deadline or at any point prior to March 29, 2021.

On February 19, 2021, Iowa Workforce Development mailed an Overpayment Statement to the claimant regarding the overpayment amounts. The claimant received the overpayment statement in a timely manner.

On March 18, 2021 Iowa Workforce Development mailed the March 18, 2021 (reference 01, o.c. 11/29/20) decision to the claimant. The reference 01 decision denied benefits *effective November 19, 2020*, based on the deputy's conclusion that the claimant was not partially unemployed from Parking, Inc. within the meaning of the law. The reference 01 decision included a March 28, 2021 appeal deadline that was extended by operation of law to Monday, March 29, 2021.

On March 29, 2021, the claimant faxed her appeal from the March 18, 2021 (reference 01, o.c. 11/29/20) decision, and the January 6, 2020 (reference 04, 05 and 06) overpayment decisions. The Appeals Bureau received the appeal on March 29, 2021 and treated it as also a late appeal from the December 31, 2019 (reference 02, o.c. 12/1/19) decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the December 31, 2019 mailing date of the decision and the March 29, 2021 appeal. 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The claimant's March 29, 2021 appeal from the December 31, 2019 (reference 02) decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the January 10, 2020 appeal deadline, and instead unreasonably delayed filing the appeal until March 29, 2021, more than 15 months after the appeal deadline. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Iowa Workforce Development error or misinformation or to delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Several days before the appeal from this early decision was due, the claimant was already aware that multiple decisions impacted on her eligibility for benefits. Each decision that referenced an allowance of benefits also referenced other eligibility requirements. The claimant elected to ignore the December 31, 2019 (reference 02) decision in its entirety. The claimant also elected to ignore the language in other decisions that highlighted the fact that there were other eligibility requirements. Because the appeal from the December 31, 2019 (reference 02) decision was untimely, the administrative law judge lacks jurisdiction to disturb the decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the December 31, 2019 (reference 02, o.c. 12/01/19), decision is untimely. The decision that denied benefits *effective December 1, 2019*, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law, remains in effect.



James E. Timberland
Administrative Law Judge

September 28, 2021
Decision Dated and Mailed

jet/scn