

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HARLAN THURN
Claimant

CLAYTON COUNTY
Employer

APPEAL 21A-UI-03911-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On January 26, 2021, Harlan Thurn (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated July 15, 2020 (reference 02) that determined claimant was not eligible for benefits from March 29 through June 27, 2020 due to being employed to such an extent as to be removed from the labor market.

A telephone hearing was held on April 1, 2021. The parties were properly notified of the hearing. The claimant participated personally. Claimant's wife and daughter, Phyllis Thurn and Marcie Rohach, participated as witnesses on his behalf. Clayton County (employer/respondent) participated by County Engineer Rafe Koopman and was represented by Attorney John Anderson.

Official notice was taken of the administrative record.

ISSUES:

- I. Is the claimant able to and available for work?
- II. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant worked for employer as a part-time assistant to the county engineer. Claimant was in this position for approximately 20 years. Claimant worked approximately 20 hours per week in this position. Claimant's immediate supervisor was Koopman. Claimant separated from employment on June 30, 2020, when his contract ended.

Claimant was employed on a year-to-year contract for 1,000 of hours per year. The contract automatically renewed on July 1 of each year unless either party provided 30 days' written notice to the contrary. Employer did not provide 30 days' written notice prior to the July 1, 2020

renewal date. However, Koopman did notify claimant in late May or early June 2020 that the contract would be renewed due to a lack of work.

There was no work available for claimant in the week ending March 21, 2020, due to the pandemic. Claimant was not paid by employer during this week. Claimant returned to his usual position and was paid as normal after that time. Claimant was able and available for work and searching for work after the separation from employment.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 15, 2020. That was claimant's correct address at that time. It is unclear whether claimant received the decision. Claimant continued to receive benefits from the benefit week ending July 11, 2020 and continuing through the benefit week ending March 13, 2021. Claimant was unaware that he had been denied benefits until he received a decision dated January 19, 2021 that determined he had been overpaid benefits based on a January 15, 2021 disqualification decision. There is no January 15, 2021 disqualification decision contained within the administrative record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated July 15, 2020 (reference 02) that determined claimant was not eligible for benefits from March 29 through June 27, 2020 due to being employed to such an extent as to be removed from the labor market is AFFIRMED.

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."

While the record in this case indicates claimant likely did receive the July 15, 2020 decision denying benefits, the record also indicates claimant was unaware he had been denied benefits until he received a decision dated January 19, 2021 that determined he had been overpaid benefits based on a January 15, 2021 disqualification decision. Claimant's confusion as to whether he had been denied benefits prior to that time is understandable given that he continued to receive benefits from the benefit week ending July 11, 2020 and continuing through the benefit week ending March 13, 2021.

The administrative law judge finds claimant's continued receipt of benefits after the issuance of the July 15, 2020 disqualification decision constitutes good cause for the delay in appealing, and that claimant did file an appeal shortly after it became clear he had been denied benefits. The appeal is therefore timely, and the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge finds claimant was still employed by employer in the same way and working to such an extent as to be removed from the labor market during the period in question. He is therefore ineligible for benefits during that period.

The administrative law judge notes this decision does not deny benefits during the week ending March 21, 2020, when work was unavailable to claimant, or after June 27, 2020, at which time claimant had separated from employment. It only denies benefits from March 29 through June 27, 2020 for the reasons set forth above.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated July 15, 2020 (reference 02) that determined claimant was not eligible for benefits from March 29 through June 27, 2020 due to being employed to such an extent as to be removed from the labor market is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 12, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.