

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M WOOD
Claimant

HARVEYS BR MANAGEMENT CO INC
Employer

APPEAL 21A-UI-05718-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Eligibility – Able and Available for Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On February 20, 2021, Angela Wood (claimant/appellant) filed an appeal from the July 24, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on April 28, 2021. The parties were properly notified of the hearing. Claimant participated personally. Harveys BR Management Co Inc (employer/respondent) participated by HR Generalist Mitchell Parker and was represented by Hearing Rep. Connie Hickerson.

Claimant's exhibit 1 admitted. Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant began working for employer on April 26, 2019. Claimant was placed on an unpaid furlough from March 19 through June 2, 2020 due to the governor ordering closure of the business during that time. Claimant returned to work on June 3, 2020, and has been employed there since. Claimant has not requested a leave of absence.

Claimant filed a claim for benefits each week from the benefit week ending April 4, 2020 and continuing through the benefit week ending June 13, 2020. She reported wages in excess of her weekly benefit amount plus \$15.00, or \$166.00, in the weeks ending April 4, June 6, and June 13, 2020.

The Unemployment Insurance Decision was mailed to claimant at the address at 99 Country Club Rd in Ralston, NE on July 24, 2020. That was claimant's correct address at that time. Claimant did not receive that decision. She was living with her mother who suffers from dementia and she believes her mother may have misplaced some of claimant's mail. Claimant first learned she had been denied benefits when she received an overpayment decision in February 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 24, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence is REVERSED. Claimant is eligible for benefits as set forth below.

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 did not receive the decision denying benefits due to no fault of her own. This denied her a reasonable opportunity to file a timely appeal. She did appeal shortly after learning she 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".

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant was placed on an unpaid furlough from March 19 through June 2, 2020 due to the governor ordering closure of the business during that time. Claimant returned to work on June 3, 2020, and has been employed there since. Claimant has not requested a leave of absence. Claimant is therefore eligible for benefits, provided she is otherwise eligible.

The administrative law judge notes that claimant is not eligible for benefits in the weeks ending April 4, June 6, and June 13, 2020, as she reported wages earned in excess of her weekly benefit amount plus \$15.00 in each of those weeks.

Employer will not be charged for benefits paid, as the department has determined not to charge employers for periods of pandemic-related unemployment.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 24, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020

based on a finding claimant requested and was granted a leave of absence is REVERSED.
Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
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May 03, 2021
Decision Dated and Mailed

abd/ol