

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA R WAGNER
Claimant

POLK COUNTY
Employer

APPEAL 21A-UI-19017-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (4R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On August 28, 2021, claimant Linda R. Wagner filed an appeal from the October 13, 2020 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant was still employed with Polk County at the same hours and wages as contemplated in her contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Thursday, October 21, 2021. Appeal numbers 21A-UI-19017-LJ-T, 21A-UI-19018-LJ-T, 21A-UI-19019-LJ-T, and 21A-UI-19020-LJ-T were heard together and created one record. The claimant, Linda R. Wagner, participated. The employer, Polk County, did not register and did not participate. Claimant's Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?
Does the claimant meet the definition of being considered partially or totally unemployed?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision based on claimant's employment with Polk County was mailed to claimant's last known address of record on October 13, 2010. She did receive the decision in October 2020. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 23, 2020.

Claimant testified that she likely received the decision and simply disregarded it, as she was not attempting to draw unemployment benefits from Polk County. Claimant had been laid off from her full-time employer due to COVID-19, and she only wanted unemployment benefits from that

employer. She continued to work for Polk County in a part-time position, and to report her wages as she earned them, so she did not believe this was affecting her employment whatsoever. When her boss from Polk County called her in October 2020 to ask whether she had filed for unemployment “against” them, she said no. Claimant never appealed the decision or reached out to the agency to try and clarify anything because she believed the agency had all of the necessary information.

Subsequently, claimant received three overpayment decisions dated August 27, 2021 (reference 03, 04, and 05). These decisions all stem from the Polk County disqualification decision. Claimant promptly appealed the overpayment decisions, and that appeal was applied to this decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. The administrative law judge understands that claimant intended to file her unemployment insurance claim related only to her full-time employment that ended. However, she had good reason to believe that her part-time employment was somehow an issue: she received the October 13, 2020 (reference 02) decision and she got a call from her employer inquiring about her claim for benefits. Claimant took no action to even inquire further into the matter, which the average person would have done. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay.

Iowa Code § 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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code § 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Despite claimant's failure to timely appeal, justice prohibits claimant being denied full benefits on this basis. The administrative record reflects that claimant was clearly a part-time employee of Polk County, generally earning one-tenth in wages per quarter of what she earned with her full-time employer. Claimant continued working for Polk County while laid off from full-time employment due to COVID-19. She reported her wages each week that she earned them and received appropriate benefits each week as a result. Claimant continues to receive the same employment from Polk County that she received in her base period of employment. Therefore, benefits are allowed and Polk County shall not be charged.

DECISION:

The October 13, 2020 (reference 02) unemployment insurance decision is modified in favor of the claimant. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer, Polk County (account number 104202-000), shall not be charged.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for removal of claimant's wage credits from Polk County (account number 104202-000), recalculation of claimant's weekly benefit amount, and issuance of any overpayment decisions consistent with those actions.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 29, 2021
Decision Dated and Mailed

lj/kmj