NATALIE A KELLING
Claimant

APPEAL 20A-UI-14878-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC
Employer

OC: 04/12/20
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 13, 2020, Natalie Kelling (claimant/appellant) filed an appeal from the July 1, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit on February 28, 2020 without good cause attributable to employer.

A telephone hearing was held on January 15, 2021. The parties were properly notified of the hearing. Claimant participated personally. Employer registered a number for the hearing but was not available at the time of the hearing.

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 July 1, 2020. That was claimant's correct address on that date. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 11, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision via email on November 13, 2020.

Claimant received the decision in a timely manner and noted the deadline to appeal. Claimant did not appeal because she was confused by it. However, claimant took no steps to clear up her

confusion, such as contacting the department for clarification. The decision clearly states that benefits are denied and an overpayment may result if it is not reversed on appeal.

After leaving the employer here, claimant performed work for two other employers. She earned approximately $3,100.00 in wages after leaving employer. Her weekly benefit amount is $156.00. A fact-finding decision issued December 16, 2020 found claimant's separation from her most recent employer was not disqualifying.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The July 1, 2020 (reference 01) unemployment insurance decision that denied benefits therefore remains in force, as the administrative law judge does not have jurisdiction to address it.

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."

Claimant received the decision in a timely manner and noted the deadline to appeal. Claimant did not appeal because she was confused by it. However, claimant took no steps to clear up her confusion, such as contacting the department for clarification. The decision clearly states that benefits are denied and an overpayment may result if it is not reversed on appeal. The delay in appealing was not due to agency error or misinformation or to delay or other action of the USPS.

The administrative law judge must conclude that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

After leaving the employer here, claimant performed work for two other employers. She earned approximately $3,100.00 in wages after leaving employer. Her weekly benefit amount is $156.00. A fact-finding decision issued December 16, 2020 found claimant's separation from her most recent employer was not disqualifying.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The July 1, 2020 (reference 01) unemployment insurance decision that denied benefits therefore remains in force, as the administrative law judge does not have jurisdiction to address it.

REMAND:

The issue of whether claimant requalified for benefits subsequent to the separation from the employer here is REMANDED to the Benefits Bureau of Iowa Workforce Development for consideration and issuance of a decision.

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

__February 3, 2021__
Decision Dated and Mailed

abd/mh

***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 currently 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.