

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNEDEY BASS

Claimant

APPEAL 22A-UI-03033-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APTS DOWNTOWN INC

Employer

OC: 06/28/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment

Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

On January 11, 2022, the claimant/appellant filed an appeal from the October 22, 2020, (reference 02) unemployment insurance decision that denied benefits based on claimant still employed in her job for the same hours and wages as original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2022. The hearing was held together with appeals 22A-UI-03031-CS-T; 22A-UI-03032-CS-T; 22A-UI-03034-CS-T; 22A-UI-03035-CS-T; 22A-UI-03036-CS-T; 22A-UI-03037-CS-T; 22A-UI-03038-CS-T and 22A-UI-03039-CS-T, and combined into one record. Claimant participated. Jennifer Bass was present as a witness for the claimant. Employer did not call in to participate during the hearing. Exhibits A, B, and C were admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Is claimant's appeal timely?
- II. Is the claimant able to work and available for work?
- III. Does the claimant meet the definition of being considered partially unemployed?
- IV. Does the claimant meet the definition of being considered totally unemployed?
- V. Does the claimant meet the definition of being temporarily unemployed?
- VI. Is claimant employed for the same hours and wages?
- VII. Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed for benefits using her parent's address because she was concerned that her mail would be stolen. An unemployment insurance decision dated October 22, 2020, ref. 02, was mailed to the claimant's parent's address located at 1208 Nightingale Pl., Boone, IA. Claimant did not receive the decision. Claimant moved in with her parents and became aware of this decision on November 14, 2021, when she received the overpayment decisions that were mailed on August 26, 2021. The overpayment decisions required the claimant to file an appeal by September 5, 2021. The notice also informed claimant that she needed to file an appeal within 10 calendar days from the decision date. The appeal was not filed until January 11, 2022, which is after the date noticed on the overpayment decisions, because claimant wanted to check with the employer and verify information with them before she appealed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The claimant chose to have her mail sent to her parent's address. IWD sent the mail to the address provided by claimant. The claimant testified that she did not receive the decision. However, claimant became aware of the decision no later than November 14, 2021, when she received the August 26, 2021 decisions. Claimant chose not to file an appeal from the decision for almost two more month. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The October 22, 2020, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Carly Smith
Administrative Law Judge

April 4, 2022
Decision Dated and Mailed

cs/kmj