

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**OWEN P HOWARD**

Claimant

**APPEAL 21A-UI-24284-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA CATHOLIC CONFERENCE**

Employer

**OC: 04/05/20**

**Claimant: Appellant (1)**

Iowa Code § 96.4(5) – Reasonable Assurance

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Owen P. Howard, filed an appeal from the December 18, 2020, (reference 02) unemployment insurance decision that determined claimant was eligible to receive unemployment benefits based on wages from other noneducational employers, because he was laid off between academic years with reasonable assurance of employment in the next term. The parties were properly notified of the hearing. A telephone hearing was held on December 27, 2021. The claimant participated personally. The employer participated through testifying witnesses Paul Jahnke and Shelby Rolston, with witness Andrew Bradley, who did not testify. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant's appeal timely?

Did the claimant have reasonable assurance of continued employment in the next school year?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in November 2010 as a part-time coach for various sports. He remains employed in the same capacity as of the date of his hearing. His employment runs during the academic year, which spans August through May.

The school where claimant worked closed due to the COVID-19 pandemic in March 2020. As a result, claimant was not paid for a portion of the last contract he had for that year. Claimant filed a claim for benefits with an effective date of April 5, 2020, when his full-time employment began intermittently laying employees off due to the COVID-19 pandemic. Claimant filed weekly continuing claims for benefits each week through the week that ended September 12, 2020. He did not receive payment for many of the weeks in which he filed weekly claims because he properly reported wages earned in weeks when he was paid.

If the employer would elect not to renew claimant's contract, he would be informed of that decision in the spring of the school year. The employer has renewed claimant's contract each year since his hire.

Claimant does have other regular, noneducational employment wage credits in the base period, which consists of the first through fourth quarters of 2019. Once these educational wage credits were removed from the calculation of claimant's benefit amount, his weekly benefit amount was reduced effective April 5, 2020.

The unemployment insurance decision was mailed to claimant's last known address of record on December 18, 2020. Claimant did not receive the decision. He filed an appeal when he received a later overpayment decision, and the appeal was docketed for this decision, as it was the decision that created the overpayment.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 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. 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant does have reasonable assurance of returning to work the following academic term or year but has other non-educational wages in the base period history. Accordingly, the unemployment insurance decision is affirmed.

Iowa Code section 96.4(5)a provides:

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

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

Iowa Admin. Code r. 871—24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in

economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871—24.52(6) provides:

Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

In this case, the claimant does have other non-educational institution wage credits in the base period. The claimant does have reasonable assurance of continued employment for the 2020 - 2021 school year. He has been determined to be monetarily eligible based on other base period wages from a noneducational employer.

**DECISION:**

The December 18, 2020, (reference 02) decision is affirmed. The claimant's appeal is timely. The claimant does have reasonable assurance of returning to work the following academic year or term, but he has other wages in the base period. Benefits are allowed, provided he is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

January 25, 2022  
Decision Dated and Mailed

ar/scn