

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITNEY N ASHBROOK
Claimant

CHILDSERVE HABILITATION CTR INC.
Employer

APPEAL 21A-UI-21481-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

On September 23, 2021, Whitney Ashbrook (claimant/appellant) filed an appeal from the decision dated October 23, 2020 (reference 01) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages.

A telephone hearing was held on November 22, 2021. The parties were properly notified of the hearing. Claimant participated personally. Childserve Habilitation Ctr Inc. (employer/respondent) did not register a number for the hearing or participate.

Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Employer held claimant out of work in the weeks ending July 11, November 7, and November 14, 2020 as a COVID-19 precaution. Claimant was not too ill to work and was available for work in those weeks.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 23, 2020. That was claimant's correct address at that time. Claimant has no recollection of receiving the decision and was unaware there was an issue until she received overpayment decisions nearly a year later. She appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated October 23, 2020 (reference 01) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages is REVERSED.

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 Unemployment Insurance Decision was mailed to claimant at the above address on October 23, 2020. That was claimant's correct address at that time. Claimant has no recollection of receiving the decision and was unaware there was an issue until she received overpayment

decisions nearly a year later. She appealed at that time. The administrative law judge finds there is food cause for delay and therefore concludes the appeal is timely. Because the appeal is timely, 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".

The administrative law judge finds claimant was able and available for work and eligible for benefits in the weeks ending July 11, November 7, and November 14, 2020. She was temporarily unemployed in those weeks due to employer holding her out as a precaution.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated October 23, 2020 (reference 01) that denied unemployment insurance benefits as of July 5, 2020 based on a finding that claimant was still employed for the same hours and wages is REVERSED. Claimant is eligible for benefits in the weeks ending July 11, November 7, and November 14, 2020.



Andrew B. Duffelmeyer
Administrative Law Judge
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November 30, 2021
Decision Dated and Mailed

abd/abd