

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHELLEY M CLAY**

Claimant

**APPEAL 20A-UI-11657-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANKENY COMMUNITY SCHOOL DIST**

Employer

**OC: 04/05/20**

**Claimant: Appellant (1R)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.4(5) – Reasonable Assurance  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the May 29, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 9, 2020, at 10:00 a.m. Claimant participated. Employer participated through Jessica Dirks, Chief Officer of Human Resources. Claimant's Exhibits A and B were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.  
Whether claimant is eligible for benefits between academic years or terms.  
Whether claimant filed a timely appeal.

**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 correct address on May 29, 2020. Claimant does not recall exactly when she received the decision. Mail from Des Moines, Iowa is typically received in Ankeny, Iowa in one to two days. Claimant has no reason to believe that was not the case for the decision mailed on May 29, 2020.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 8, 2020. Claimant appealed the decision online on September 20, 2020. The appeal was received by Iowa Workforce Development on

September 20, 2020. Claimant did not submit her appeal prior to the deadline due to her confusion over the unemployment insurance benefit process as applied to her two employers.

Claimant was employed by both the City of Ankeny and the Ankeny Community School District during her base period. The decision issued on May 29, 2020 found claimant was still employed in her job working her same hours and wages and, thus, was not partially unemployed. The decision denied benefits as of April 5, 2020. Claimant's situation changed after the fact-finding interview that led to the May 29, 2020 decision. The issues of whether claimant is eligible for benefits on a week-to-week basis due to partial unemployment and her ability to and availability for work should be remanded to Iowa Workforce Development's Benefits Bureau for an investigation and decision.

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

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

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).

Claimant received the decision prior to the deadline but did not submit her appeal until more than two months after the deadline had expired. Claimant's delay in submitting her appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**DECISION:**

Claimant's appeal was not timely. The May 29, 2020 (reference 01) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.

**REMAND:**

The issues of whether claimant is partially unemployed and able to and available for work on a week-to-week basis are remanded to Iowa Workforce Development Benefits Bureau for an investigation and decision.



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Adrienne C. Williamson  
Administrative Law Judge  
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November 23, 2020  
Decision Dated and Mailed

acw/scn