

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JACQUELINE L GONNER**

Claimant

**DUBUQUE-HOLY FAMILY CATHOLIC**

Employer

**APPEAL 22A-UI-10407-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**

**Claimant: Appellant (4)**

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 February 5, 2021 (reference 02) unemployment insurance decision that denied benefits effective May 31, 2020 finding claimant was unemployed during academic terms. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2022. Claimant participated. Employer participated through Paul Jahneke, Hearing Representative, and Mary Sulentic, Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.

Whether claimant was eligible for benefits between academic year or terms.

**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 of record on February 5, 2021. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 15, 2021. Claimant learned of the decision when she received subsequent overpayment decisions. Claimant appealed the decisions online on April 25, 2022. Iowa Workforce Development (IWD) received the appeal on April 25, 2022 and applied it to all adverse decisions including the February 5, 2021 disqualifying decision.

Claimant was employed as a full-time Media Desk Attendant with Dubuque-Holy Family Catholic Schools during the 2019/2020 school year. The school closed April 6, 2020 due to Covid-19. The school remained closed for the rest of the school year which was scheduled to end June 3, 2020. From April 6, 2020 through June 3, 2020, claimant performed no work and received no wages; claimant had no barriers to employment and would have worked if employer had work available.

Claimant filed an initial claim for unemployment insurance benefits effective March 29, 2020 and ongoing weekly claims between March 29, 2020 and June 6, 2020.

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

For the reasons that follow, the administrative law judge concludes:

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not receive the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed her appeal

promptly upon learning of the decision denying benefits. Claimant's appeal is considered timely.

The next issue to be determined is whether claimant is eligible for benefits between academic years or terms. For the reasons that follow, the administrative law judge concludes:

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.

Public Law 94-566 provides:

(c) An individual who performs services for an educational institution or agency in a capacity (other than an instructional, research, or principal administrative capacity) shall not be eligible to receive a payment of assistance or a waiting period credit with respect to any week commencing during a period between two successive academic years or terms if:

(1) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(2) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than an instructional, research, or principal administrative capacity) in the second of such academic years or 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.

In this case, claimant filed for unemployment insurance benefits during the academic year and not the period between academic years. Therefore, the issue of whether claimant had reasonable assurance is moot. Claimant was unemployed and able to and available for work during the academic year and, thus, is eligible for benefits. Benefits are allowed until June 6, 2020, provided claimant is otherwise eligible.

**DECISION:**

The appeal is timely. The February 5, 2021 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant was unemployed and able to and available for work. Benefits are allowed through June 6, 2020 provided claimant is otherwise eligible.



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Adrienne C. Williamson  
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June 21, 2022  
Decision Dated and Mailed

acw/ACW