

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CALLIE A HOFFMAN
Claimant

SPENCER FAMILY YMCA
Employer

APPEAL 22A-UI-08890-AD
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Eligibility – Able, Available, Work Search
Iowa Admin. Code r. 871-24.23(10)- Leave of Absence

STATEMENT OF THE CASE:

On April 8, 2022, Callie Hoffman (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 9, 2021 (reference 02) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant requested and was granted a leave of absence.

Claimant requested an in-person hearing. Notices of hearing were mailed to the parties’ last addresses of record on April 29, 2022, for a hearing set for May 18, 2022 at 11 a.m. Appeal Nos. 22A-UI-08890, 22A-UI-08891, 22A-UI-08892, and 22A-UI-08893 are related and were heard together at that time. Claimant participated personally. Spencer Family YMCA (employer/respondent) participated by Childcare Director Amy Kuehler.

Claimant brought documents with her to the hearing. Those were not admitted into evidence because they were not properly submitted to both the appeals bureau and the opposing party prior to the hearing. No other proposed exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant filed an original claim for unemployment insurance benefits effective March 22, 2020. Claimant filed weekly continued claims through August 15, 2020. She filed weekly claims again in the weeks ending January 2, January 9, and February 27, 2021.

The administrative record shows the decision denying benefits as of December 27, 2020 based on a finding that she requested and was granted a leave of absence was mailed to claimant at

the above address on March 9, 2021. That was claimant's correct address at that time. Claimant did receive the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 19, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant chose not to appeal the decision denying benefits.

Decisions finding claimant was overpaid unemployment insurance benefits (UI) and Federal Pandemic Unemployment Compensation (FPUC) as a result of the decision denying benefits as of December 27, 2020 were issued on April 1, 2022. Claimant appealed after receiving those decisions. At that time the Appeals Bureau also set up appeals on the prior decisions denying benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 9, 2021 (reference 02) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant requested and was granted a leave of absence is therefore final and remains in force.

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.

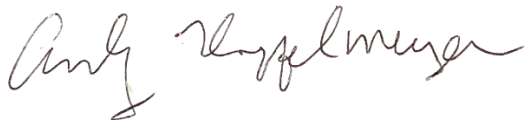
There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). 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.”

Claimant received the decision in a timely manner and had a reasonable opportunity to file a timely appeal but chose not to. A good cause reason for delay in appealing has not been established. The administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant’s appeal was untimely. The decision dated March 9, 2021 (reference 02) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant requested and was granted a leave of absence is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 24, 2022
Decision Dated and Mailed

abd/abd