

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABUBAKR ELKHANGI
Claimant

APPEAL NO. 20A-UI-08645-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Abubakr Elkhangi filed a late appeal from the June 8, 2020, reference 01, decision the denied benefits effective April 5, 2020, based on the deputy's conclusion that that Mr. Elkhangi was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was started on September 3, 2020. On September 3, 2020, the claimant participated, but the employer did not provide a telephone number and did not participate. On September 3, 2020, the administrative law judge adjourned the hearing when it became apparent there was a timeliness of appeal issue that could not be added to the hearing in light of the employer's absence. After due notice, the hearing reconvened on September 23, 2020. The claimant participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Kari Gerst and Amanda Knight. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A, the June 8, 2020, reference 01, decision, and the claimant's PUA application.

ISSUES:

Whether there is good cause to treat the claimant's late appeal as a timely appeal.
Whether the claimant was able to work and available for work during the period of April 5, 2020 through August 1, 2020.
Whether the claimant was partially unemployed during the period of April 5, 2020 through August 1, 2020.
Whether the employer's account may be charged for benefits for the period of April 5, 2020 through August 1, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a current full-time employee of Care Initiatives. Claimant works for Care Initiatives as a certified nursing assistant. Claimant started the employment in July 2019. Claimant is scheduled for 40 hours per week, but is paid for 37.5 per week, due to his 30-minute unpaid

lunch break. From the start of the employment until July 24, 2020, claimant's base hourly wage was \$14.00. Claimant also received a 50-cent shift differential. The claimant's weekly wages totaled \$543.75. Effective July 24, 2020, claimant received a three percent, 42-cent, wage increase, taking his base wage to \$14.42. Claimant continued to receive the shift differential. The claimant's weekly wages became \$559.50. The employer has continued to provide full-time hours and the only time the claimant has worked less than full-time hours has been when he is sick or has requested time off.

The claimant established an original claim for benefits that was effective April 5, 2020. Iowa Workforce Development set his weekly benefit amount at \$402.00. The claimant made weekly claims for the period of April 5, 2020 through August 1, 2020. Throughout the claim period, the claimant continued to receive full-time work hours and weekly wages that exceeded his weekly benefit amount by more than \$15.00.

On June 5, 2020, the claimant participated in a fact-finding interview that addressed whether he was partially unemployed from Care Initiatives. During the fact-finding interview, the claimant told the deputy that he never meant his claim to be about his employment with Care Initiatives. Claimant recently worked as a part-time Uber driver and intended to file a claim for benefits based on the CARES Act and assistance that law provides to independent contractors who lost income in connection with the COVID-19 pandemic. During the fact-finding interview, the deputy told the claimant that he would receive a decision denying regular benefits following the fact-finding interview and that he needed to apply for PUA benefits. On June 5, 2020, the claimant filed an application for PUA benefits. On June 8, 2020, Iowa Workforce Development mailed the June 8, 2020, reference 01, decision to the claimant. The claimant received the decision on June 10, 2020. The decision denied benefits effective April 5, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. The decision stated that an appeal from the decision must be postmarked by June 18, 2020 or be received by the Appeal Section by that day. The claimant received the reference 01 decision on June 10, 2020. Based on the guidance provided by the deputy, the claimant did not file an appeal from the decision by the June 18, 2020. Instead, the claimant waited to hear further in response to his June 5, 2020 application for PUA benefits. When the claimant had not heard anything about his application for PUA benefits by July 20, 2020, he contacted Iowa Workforce Development customer service to inquire about the status of his PUA application. At that time, an Agency representative told the claimant that it was necessary to file an appeal from the June 8, 2020, reference 01, decision before his PUA application could be further considered and a decision could be entered. On July 20, 2020 the claimant filed an online appeal from the June 8, 2020, reference 01, decision. The Appeals Bureau received the appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in relevant part, as follows:

Unless 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.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d

138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

More than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). One 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).

The evidence establishes good cause to treat the claimant's late appeal as a timely appeal. The claimant received the June 8, 2020, reference 01, decision in a timely matter and had reasonable opportunity to file an appeal by the June 18, 2020 appeal deadline. The weight of the evidence establishes that the claimant likely would have taken steps to file an appeal by the June 18, 2020 deadline but for the deputy leading him to believe that the decision denying benefits was merely perfunctory and that he needed instead to focus on his application of PUA. Workforce Development misinformation and error contributed to the late filing of the appeal and provides good cause to deem the late appeal a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to enter a ruling based on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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".

Iowa Admin. Code r. 871-24.22(2) provides, in pertinent part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work,

and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.19(38)(b)(1) provides:

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant did not meet the availability requirement and was part partially unemployed during the period of April 5, 2020 through August 1, 2020. Throughout that time, the claimant continued to be employed full-time and continued to receive weekly wages that exceeded his weekly benefit amount by more than \$15.00. Benefits are denied for the period of April 5, 2020 through August 1, 2020. The employer's account will not be charged for benefits for the period of April 5, 2020 through August 1, 2020.

DECISION:

The claimant's appeal was timely. The June 8, 2020, reference 01, is affirmed. The claimant did not meet the availability requirement and was not partially unemployed during the period of April 5, 2020 through August 1, 2020. Benefits are denied for the period of April 5, 2020 through August 1, 2020. The employer's account shall not be charged for benefits for the period of April 5, 2020 through August 1, 2020.



James E. Timberland
Administrative Law Judge

September 25, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**