

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BENJAMIN D. PROFFITT
Claimant

HY-VEE INC.
Employer

APPEAL 22A-UI-04580-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On February 13, 2022, the claimant/appellant filed an appeal from the January 19, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant requesting and granted a leave of absence. Benefits were denied as of September 20, 2020. The parties were properly notified about the hearing. A telephone hearing was held on March 24, 2022. The hearing was held together with appeal 22A-UI-04581-CS-T and combined into one record. Claimant participated. Employer participated through hearing representative, Erin Bewley. Human Resource Manager, Meredith Wood, testified on behalf of the employer. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Is claimant's appeal timely?
- II. Is the claimant able to and available for work?
- III. Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on January 19, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated October 26, 2021. Claimant received the overpayment decision in November 2021. Claimant did not understand the back of the overpayment decision that had the appeal rights and wanted to discuss his options with Iowa Workforce Development. Claimant contacted Iowa Workforce Development to discuss his appeal rights. During one of his phone calls he was informed by customer service he could appeal online and was given a link to follow

to file the appeal. When claimant attempted to appeal the decision it did not take him to the proper form. Claimant reached out again and was told to send an email to the appeals bureau with his appeal. Claimant was working and would follow up on the appeal every couple of weeks. The appeal was sent February 13, 2022.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 9, 2017. Claimant last worked as a part-time convenience store clerk. Claimant was previously separated from his full-time employer and began working more hours with his part-time employer, Hy-Vee.

Claimant voluntarily requested time off from employer from September 20, 2020, through October 4, 2020. Claimant's child required surgery in Minnesota so he needed to be with his child to care for her. Claimant returned to work on October 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The claimant testified that he did not receive the decision, however, he was aware that he was disqualified when he received the overpayment decision. Claimant testified that he had questions on how to apply and contacted Iowa Workforce Development to discuss them. Claimant was having problems filing his appeal. Claimant's appeal was completed on February 13, 2022. The claimant took almost three and half months to complete his appeal. Claimant testified that his work schedule prevented him from following up so he would attempt to follow up on the appeal every couple of weeks. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 19, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. Below the signature, there is a faint, small, illegible stamp or mark.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

April 11, 2022

Decision Dated and Mailed

cs/mh

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.