

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MA T KYI
Claimant

HY-VEE INC
Employer

APPEAL 22A-UI-10413-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/30/21
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 26, 2022, Ma Kyi (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated August 19, 2021 (reference 01) that denied unemployment insurance benefits as of May 30, 2021 based on a finding that claimant was unable to perform work due to injury.

A telephone hearing was held on June 9, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-10413, 22A-UI-10414, and 22A-UI-10415 are related and were heard together, forming a single hearing record. Claimant participated personally and with the assistance of a Burmese language interpreter. Claimant’s husband, Khine Myint, participated as a witness. Employer Hy-Vee Inc was noticed on 22A-UI-10413 but did not appear or participate.

The fact-finding documents prepared by IWD in issuing the August 19, 2021 (reference 01) decision denying benefits were sent to the parties prior to the hearing and admitted as the Department’s Exhibit 1. No other exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer on January 15, 2019. Claimant was hired and worked as a full-time cleaner. Claimant last performed work for employer on or about May 15, 2021. Claimant opened a claim for benefits effective May 30, 2021. Claimant filed for benefits through August 7, 2021. Claimant was unable to perform any work during this period due to conditions requiring hand surgeries, two hand surgeries, and the subsequent recovery from those procedures.

The Unemployment Insurance Decision was mailed to claimant at the above address on August 19, 2021. That was claimant's correct address at that time. Claimant did receive the decision. The decision contains a warning that it becomes final unless in appeal is taken by August 29, 2021.

The delay in appealing was due to claimant's inability to read and understand the decision due to a language barrier. She appealed after receiving subsequent decisions finding she was overpaid benefits and obtaining assistance in appealing those.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated August 19, 2021 (reference 01) that denied unemployment insurance benefits as of May 30, 2021 based on a finding that claimant was unable to perform work due to injury is **AFFIRMED**.

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."

The delay in appealing was due to claimant's inability to read and understand the decision due to a language barrier. She appealed after receiving subsequent decisions finding she was overpaid benefits and obtaining assistance in appealing those. The administrative law judge finds in the circumstances there exists good cause reason for the delay and the appeal is therefore accepted as timely. The administrative law judge therefore has jurisdiction to address the underlying issue.

Iowa Code section 96.4 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Claimant began working for employer on January 15, 2019. Claimant was hired and worked as a full-time cleaner. Claimant last performed work for employer on or about May 15, 2021. Claimant opened a claim for benefits effective May 30, 2021. Claimant filed for benefits through August 7, 2021. Claimant was unable to perform any work during this period due to conditions requiring hand surgeries, two hand surgeries, and the subsequent recovery from those procedures.

Because claimant was unable to perform work during the period in question she does not meet the eligibility requirements to receive benefits during that period. The decision denying benefits is therefore affirmed.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated August 19, 2021 (reference 01) that denied unemployment insurance benefits as of May 30, 2021 based on a finding that claimant was unable to perform work due to injury is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge

June 14, 2022
Decision Dated and Mailed

abd/abd