

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMANDA MCCALLON**  
Claimant

**BITTER END OLD SCHOOL CHOPPERS  
INC**  
Employer

**APPEAL 21A-UI-17863-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

On August 13, 2021, Amanda McCallon (claimant/appellant) filed an appeal from the October 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of July 19, 2020, based on a finding claimant was still employed for the same hours and wages as in the contract of hire. A telephone hearing was held on October 5, 2021. The parties were properly notified of the hearing. Claimant participated personally. Bitter End-Old School Choppers Inc. (employer/respondent) did not register a number for the hearing or participate. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the 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 October 14, 2019. She was hired as the office manager and told she would work between 20 and 25 hours per week. Claimant did work about 20 hours per week for approximately the first six months of her employment. Her hours then declined greatly until she was only working 5-10 hours per week. Claimant began filing for benefits for that reason.

Claimant filed a claim each week from the benefit week ending July 25, 2020 through October 17, 2020. She reported her wages earned each week she filed. Her weekly benefit amount plus \$15.00 was \$204.00. Claimant earned less than that amount in each of those weeks except the week ending August 22, 2020. She was able and available for her usual work schedule during that time.

Claimant subsequently separated from employer in March 2021 and began filing again with the week ending April 10, 2021. She filed each week through the benefit week ending July 17, 2021. She was able and available for work and searching for work during each week filed.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 23, 2020. That was claimant's correct address at that time. Claimant did receive the decision. The delay in appealing was due to Department misinformation. Specifically, she was told on multiple occasions that her claim was not locked and she did not need to appeal. Claimant was prompted to appeal when she later determined that information was not accurate.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The October 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of July 19, 2020, based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Benefits are allowed as set forth below.

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 administrative law judge finds the delay in appealing was due to any agency misinformation. Claimant filed the appeal upon learning she had been misinformed. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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 Code section 96.1A(37) provides:

*"Total and partial unemployment"*.

a. An individual shall be deemed "*totally unemployed*" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge finds claimant was partially unemployed and eligible for benefits from the benefit week ending July 25, 2020 through the benefit week ending October 17, 2020, not including the benefit week ending August 22, 2020. Claimant is not eligible for benefits in that week because she earned wages in excess of her weekly benefit amount plus \$15.00. Claimant was not employed for the same hours and wages as in the contract of hire in those other weeks but was able and available for work as usual.

The administrative law judge further finds claimant was totally unemployed and eligible for benefits from the benefit week ending April 10, 2021 and continuing through the benefit week ending July 17, 2021, when the claim year ended. She was able and available for work and searching for work during each week filed during that period.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The October 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of July 19, 2020, based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Benefits are allowed as set forth above.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 12, 2021

Decision Dated and Mailed

abd/kmj

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.