

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SYDNEY R BAKER
Claimant

APPEAL NO. 21A-UI-18469-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA AVENUE LLC
Employer

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 16, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 2, 2021. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?
Whether claimant is able and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on September 16, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 26, 2020. The appeal was not filed until August 20, 2021, which is after the date noticed on the disqualification decision. Claimant stated that she did receive the decision at a very late date. She then contacted IWD with questions and was told that she didn't need to do anything as the decisions issued in this matter and the ref 02 matter were in error.

Claimant stated that she was laid off on or shortly after March 15, 2020. After the layoff, claimant went home to Chicago for a period of time. As of May 3, 2020 claimant was still going back and forth from Chicago, but she was only in Chicago for a couple of days at a time. She remained able to return to work at any time when employer alerted her that she needed to return. At or around June 1, 2020, employer requested claimant to return to work and work 30 or so hours a week. IWD filings show that although claimant worked 30 hours every week, she showed very little in come every other week and enhanced income for the alternating weeks. This allowed claimant many weeks of state and FPUC benefits.

Claimant did return to work and consistently worked at or around 30 hours every week until she voluntarily quit her job on July 10, 2020.

Claimant stated that she consistently worked at or around 30 hours a week from the date she was brought back to work until she quit on July 10, 2020. In spite of this, claimant listed her wages as greatly varying week-to-week with many weeks listing at or below \$50.00 in earnings for the week. This allowed claimant to receive unemployment benefits and the supplemental benefits on many weeks she should not have been eligible as she worked too many hours and earned money over her weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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 calendar days for appeal begin 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal as she was advised that there was nothing to do as an IWD employee stated that the decisions were in error.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to an 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 is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature 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(1)a provides:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Inasmuch as the claimant has shown the ability to work in some capacity at any time she was called back to work, she has established the ability to work from the period of May 3, 2020 through June 1, 2020 when she was actually called back to work. After the date of June 1, 2020, claimant was consistently working 30+ hours a week until her quit on July 10, 2020.

This matter will be remanded to the investigations bureau for further investigation into claimant wages for the weeks from June 1 through July 9, 2020. It further appears that claimant did not report wages when earned, but rather when she received checks. This is not appropriate under the law and may result in different accounting.

DECISION:

The September 16, 2021, reference 01, decision is reversed. The appeal in this case is deemed timely. Claimant is eligible to receive unemployment benefits after May 3, 2021 as she remained able and available for work, if she is otherwise eligible.

This matter will be remanded to the investigations unit as it appears claimant has repeatedly understated her wages for weeks when she was working, and transferred wages earned during those weeks to other weeks. This resulted in claimant receiving more in unemployment benefits and supplemental benefits than she would have otherwise been entitled to receive.



Blair A. Bennett
Administrative Law Judge

November 30, 2021
Decision Dated and Mailed

bab/mh