

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG NORD
Claimant

DAVENPORT COMMUNITY SCH DIST
Employer

APPEAL 22A-UI-01279-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(5) – Eligibility Between Academic Years or Terms
Iowa Admin. Code r. 871-24.52(6) – Non-educational Wage Credits

STATEMENT OF THE CASE:

On December 13, 2021, Craig Nord (claimant/appellant) filed an appeal from the decision dated February 16, 2021 (reference 01) that removed wages earned with employer from the claim but allowed unemployment insurance benefits based on wages earned with non-educational employers.

A telephone hearing was held on February 4, 2022. The parties were properly notified of the hearing. Claimant participated personally. Davenport Community Sch Dist (employer/respondent) participated by HR Generalist Jacy Rangel. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?

FINDINGS OF FACT:

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

The administrative record shows the unemployment insurance decision was mailed to claimant at the above address on February 16, 2021. That was claimant's correct address at that time. Claimant does not recall whether he received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 26, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on December 13, 2021, after receiving a subsequent decision finding he was overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated February 16, 2021 (reference 01) that removed wages earned with

employer from the claim but allowed unemployment insurance benefits based on wages earned with non-educational employers is therefore final and remains in force.

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.”

Claimant does not recall whether he received the decision. However, the administrative record shows the unemployment insurance decision was mailed to claimant at the above address on February 16, 2021. That was claimant's correct address at that time. Claimant did not appeal until December 13, 2021. Based on the evidence available, the administrative law judge finds the decision was received in a timely manner and a good cause reason for the delay in appealing has

not been established. The administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated February 16, 2021 (reference 01) that removed wages earned with employer from the claim but allowed unemployment insurance benefits based on wages earned with non-educational employers is therefore final and remains in force.



Andrew B. Duffelmeyer
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February 23, 2022
Decision Dated and Mailed

abd/abd