

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUSTIN J FREIBURGER
Claimant

DUBUQUE COUNTY HISTORICAL SOCIETY
Employer

APPEAL 21A-UI-22417-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Austin J. Freiburger, filed an appeal from the November 18, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied regular state benefits. After proper notice, a telephone hearing was held on December 1, 2021. The hearing was held together with Appeals 21A-UI-22418-JC-T and 21A-UI-22419-JC-T. The claimant participated personally. Karen Freiburger, mother of claimant, and Laura Quaid, aunt of claimant, testified on his behalf. The employer participated through Tom Lange.

The administrative law judge took official notice of the administrative records. Department Exhibits 1-3 and Employer Exhibit A were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant able to work and available for work effective May 22, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his unemployment insurance claim with an effective date of March 15, 2020 after being temporarily laid off from his part-time employment with Dubuque County Historical Society. Claimant declined to return to work when he was recalled May 22, 2020 because he was uncomfortable working outside the home, at any job. Claimant lived with his mom, who was high risk if exposed to COVID-19. Employer had implemented masks, hand sanitizer, social distancing through scheduled visits and plexi-glass barriers between employees and guests.

An initial decision dated November 18, 2020 was mailed to the claimant's address of record. Claimant received the initial decision within the prescribed appeal period. Claimant stated he read both the front and back of the document. The document contained a warning that an appeal was due by November 28, 2020. Claimant stated he filed an appeal but had no available information about when, how or whether he followed up with IWD. Administrative records reflect claimant did file for and was approved for Pandemic Unemployment Assistance (PUA) benefits in an initial decision mailed to him on January 16, 2021 (Department Exhibit 3). In order to be eligible for PUA benefits, a claimant must be denied regular state benefits.

On September 27, 2021, two initial decisions regarding possible overpayments were mailed to the claimant. Claimant filed his appeal on October 6, 2021 after receiving the overpayment decisions. The appeal was filed using the online option (Department Exhibit 1). No evidence was presented that claimant's appeal was delayed due to agency or postal service error.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to file a timely appeal.

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

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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

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. 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).

Claimant in this case acknowledged he received the November 18, 2020 initial decision within the prescribed appeal period. Claimant provided no credible evidence that he filed an appeal before October 6, 2021, which corresponded to claimant receiving overpayment decisions dated September 27, 2021. No evidence was presented that claimant's delay was due to agency or postal service error. Further, because claimant applied for and was notified of approval of PUA benefits in January 2021, he reasonably would have had knowledge he was not eligible for regular state benefits if he had taken steps to apply for and later approved for the PUA program.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 unemployment insurance decision dated November 18, 2020, (reference 02) is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



Jennifer L. Beckman
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December 27, 2021
Decision Dated and Mailed

jlb/scn