

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CONNIE L RUSSELL**

Claimant

**APPEAL 21A-UI-11287-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEHAVIORAL TECHNOLOGIES CORP**

Employer

**OC: 03/29/20**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal on April 24, 2021 from the August 20, 2020 (reference 03) unemployment insurance decision that found she was denied regular unemployment insurance benefits funded by the State of Iowa effective March 29, 2020 because she was still employed at the same hours and same wages as her original contract of hire. The claimant was properly notified of the hearing. A telephone hearing was held on July 9, 2021. The claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's administrative records. The hearing was consolidated with Appeal No. 21A-UI-11288-DB-T and 21A-UI-11290-DB-T.

**ISSUE:**

Did the claimant file a timely appeal?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was issued on August 20, 2020 (reference 03) that found the claimant was not eligible for regular unemployment insurance benefits effective March 29, 2020 because she was still employed at the same hours and same wages as her original contract of hire. The decision stated that an appeal must be filed on or before August 30, 2020. The claimant received the decision in the mail prior to the appeal deadline. The claimant testified that she mailed an appeal letter prior to the appeal deadline to Iowa Workforce Development; however, the appeal was not received by the Appeals Bureau and docketed for appeal. The claimant telephoned Iowa Workforce Development to inquire about the appeal and was told she would receive a notice in the mail about the hearing date and time. Another decision dated April 14, 2021 (reference 05) was issued that found the claimant was overpaid benefits. The claimant filed an appeal via the electronic online appeal system on April 24, 2021. This case was docketed with the filing of her April 24, 2021 online appeal.

Effective March 29, 2020 through the week-ending May 16, 2020, the claimant was not able to work and under a doctor's instructions to quarantine as she had underlying health conditions

that could make her more susceptible to serious complications if she contracted COVID-19. She returned to work the week beginning May 17, 2020 to her regular full-time position as a developmental specialist with this employer.

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

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.35(1) provides:

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

(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 of 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. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

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.

(emphasis added).

The ten calendar days for appeal begins running on the issuing 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. Bd. 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 issuing 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).

The rules of Iowa Workforce Development do not give the administrative law judge the flexibility to extend the deadline for good cause. There is no indication that the delay in this case was

caused by an error of Iowa Workforce Development or by the postal service in delivering the decision to the claimant.

In this case, the claimant testified that an appeal was filed in August of 2020 via the United States postal service and that appeal letter was missing. Iowa Code § 622.105 governs the type of evidence of the date of mailing.

Iowa Code § 622.105 provides:

Evidence of date mailed.

1. Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying. In the event of nonreceipt of any such report, tax return, statement, or payment, the sender shall file a duplicate within thirty days of receiving written notification of nonreceipt of such report, tax return, statement, or payment. Filing of a duplicate within thirty days of receiving written notification shall be considered to be a filing made on the date of the original filing.

2. For the purposes of this section “competent evidence” means evidence, **in addition to the testimony of the sender**, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specific date.

When an appellant testifies that an appeal letter is missing, evidence to establish date of the appeal letter must include more than just the “testimony of the sender.” *Lange v. Iowa Dep’t of Revenue*, 710 N.W.2d 242, 247-49 (Iowa 2006); accord *Hagen v. Iowa Dental Bd.*, 13-0162 (Iowa App. 2013)(testimony that license renewal was mailed per office practice was sufficient to satisfy common law presumption but insufficient to satisfy Iowa Code § 622.105 which governs appeals to administrative agencies). As such, the testimony of the claimant that she mailed an appeal prior to the deadline, without other corroborating evidence, is insufficient to satisfy Iowa Code § 622.105.

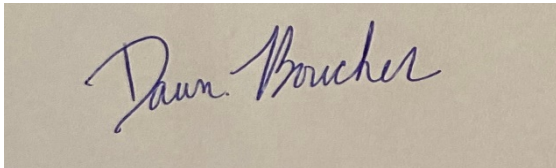
The claimant’s failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As such, the appeal was not timely 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).

Even if the appeal was considered timely, the claimant was unemployed effective March 29, 2020 through the week-ending May 16, 2020 as she was not able to work and under a doctor’s instructions to quarantine. Effective the benefit week beginning May 17, 2020, she returned to her regular full-time position and was not considered unemployed at that time. A claimant who is not able to work is not eligible for regular unemployment insurance benefits funded by the State of Iowa pursuant to Iowa Code § 96.4(3) and benefits would be denied on that basis. The claimant may be eligible for Federal Pandemic Unemployment Assistance (PUA) benefits;

however, an application for PUA benefits must be filed by the claimant. Instructions for filing a PUA application are listed below.

**DECISION:**

The August 20, 2020 (reference 03) unemployment insurance decision denying regular unemployment insurance benefits funded by the State of Iowa effective March 29, 2020 remains in effect. The appeal in this case was not timely.



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Dawn Boucher  
Administrative Law Judge

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July 20, 2021  
Decision Dated and Mailed

db/kmj

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.