

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MAUREEN E. ROBERTSON**  
Claimant

**APPEAL 22A-UI-04504-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERY BROTHERS MOTORS OF IOWA  
CITY**  
Employer

**OC: 04/19/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(2)(I)-On-Call Workers  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages  
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On February 10, 2022, the claimant/appellant filed an appeal from the March 11, 2021 (reference 02) unemployment insurance decision that denied benefits based on claimant being still employed in her job. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2022. The hearing was held together with appeals 22A-UI-04503-CS-T; 22A-UI-04505-CS-T; 22A-UI-04508-CS-T; 22A-UI-04511-CS-T; 22A-UI-04512-CS-T; and 22A-UI-04513-CS-T, and combined into one record. Claimant participated. Employer did not call in to participate. Administrative notice was taken of claimant's unemployment insurance benefits.

**ISSUES:**

- I. Is claimant's appeal timely?
- II. Is the claimant able to work and available for work?
- III. Does the claimant meet the definition of being considered partially unemployed?
- IV. Does the claimant meet the definition of being considered totally unemployed?
- V. Does the claimant meet the definition of being temporarily unemployed?
- VI. Is the claimant an on-call worker?
- VII. Is claimant employed for the same hours and wages?
- VIII. Is the employer's account subject to charge?

## **FINDINGS OF FACT:**

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

An unemployment insurance decision was mailed to the claimant's last known address of record on March 11, 2021. Claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 21, 2021. The appeal was not filed until February 10, 2022. Claimant does not know why she did not appeal the decision.

Claimant began working for employer on July 2, 2019. Claimant was hired as a part-time shuttle driver and also made follow-up service calls. When claimant was hired she was paid \$12.00 an hour. Claimant was hired to be the shuttle driver on Fridays and would work nine to ten hours. Claimant was not guaranteed a set number of hours. Over the course of claimant's employment she was asked to make follow-up service calls. This required claimant to work three more days.

In April 2020, claimant had a discussion with her manager about her concerns about driving the shuttle for the employer. Claimant was concerned with being in an enclosed area with members of the public and contracting COVID. A couple weeks later claimant's manager agreed that it would be best if she did not work due to her concerns about COVID.

Claimant returned to work for the employer on June 22, 2020. Claimant worked from home and performed follow-up service calls three days a week for the employer. Claimant's hours varied depending on the amount of calls she needed to make for the employer.

Claimant filed for Pandemic Unemployment Assistance (PUA). On March 15, 2021, claimant was approved for PUA benefits. Claimant's approval retroactively approved her for benefits beginning on April 19, 2020. Claimant was paid PUA benefits for the weeks beginning March 13, 2021 through the week ending April 17, 2021. KPY1 does not show that claimant was paid PUA benefits from April 19, 2020 through March 12, 2021. Claimant receive FPUC benefits and LWAP benefits as a result of the state unemployment benefits. Claimant has not been issued FPUC and LWAP benefits as a result of the PUA benefits from April 19, 2020 through March 12, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 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. 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 § 96.8, subsection 5.

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. 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 mailing date and the date this appeal was filed. Claimant did not file an appeal of the ref. 02 decision until February 10, 2022. 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that 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). 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 March 11, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:**

The issue of whether claimant was paid PUA benefits, FPUC benefits as a result of the PUA benefits, and LWAP benefits as a result of the PUA benefits, from April 19, 2020 through March 12, 2021, is remanded to the Benefits Bureau to make a determination on whether claimant's overpayment balances can be offset by the unpaid PUA, FPUC and LWAP benefits and issue any surplus of benefits to claimant. If an offset of benefits cannot occur then the Benefits Bureau shall issue payment to claimant for the benefits.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

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Carly Smith  
Administrative Law Judge

March 31, 2022

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Decision Dated and Mailed

cs/abd