

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEITH A MAUK**  
Claimant

**PARKING INC**  
Employer

**APPEAL 22A-UI-08919-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

On April 8, 2022, Keith Mauk (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated May 26, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he refused to accept suitable work on June 24, 2020.

A telephone hearing was held on May 24, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-08919, 22A-UI-08920, 22A-UI-08921, 22A-UI-08923, and 22A-UI-08927 are related and were heard together. Claimant participated personally. Claimant’s wife, Linda Mauk, observed. Parking Inc (employer/respondent) participated by Director of Operations Will Hayes.

No exhibits were offered or admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

The decision denying benefits was mailed to claimant at the address 10832 RAY ST INDIANOLA IA 50125-8698 on May 26, 2021. That was claimant’s correct address at that time. Claimant is unsure whether he received the decision. Claimant was not having issues receiving his mail around that time.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 5, 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 subsequent decisions finding he was overpaid benefits as a result of the denial of benefits. Claimant appealed those decisions on April 8, 2022. At that time the Appeals Bureau also set up an appeal of the May 26, 2021 decision which denied 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 May 26, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he refused to accept suitable work on June 24, 2020 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 is unsure whether he received the decision denying benefits. However, the administrative record shows the decision was sent to claimant on May 26, 2021. Claimant confirmed that was the correct mailing address for him and he was not having issues receiving his mail around that time. The weight of the evidence is that the decision was sent to the correct address on the date in question and received shortly thereafter. Claimant therefore had a reasonable opportunity to file a timely appeal but did not do so. Claimant did not appeal until he received decisions approximately a year later, finding he was overpaid as a result of the May 26, 2021 decision denying benefits. No other good cause reason for the delay in appealing has been established. As such the administrative law judge must conclude 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.

**The administrative law judge notes claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply for it, is set forth below.**

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The decision dated May 26, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he refused to accept suitable work on June 24, 2020 is therefore final and remains in force.



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Andrew B. Duffelmeyer  
Administrative Law Judge

May 25, 2022  
Decision Dated and Mailed

abd/abd

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.