

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ORA L WALSHIRE
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL NO. 21A-UI-17788-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a late appeal from the September 28, 2020, reference 02, decision that denied benefits effective June 21, 2020, based on the deputy's conclusion that the claimant was not partially unemployed from her employment with Mercy Medical Center. After due notice was issued, a hearing was held on October 7, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. There were three matters set for a consolidated hearing: 21A-UI-17788-JT-T, 21A-UI-17789-JT-T, and 21A-UI-17790-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KFFV, WAGE-A, and the reference 02, 03 and 04 decisions.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective June 21, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$277.00. Iowa Workforce Development paid \$277.00 in regular benefits for the week that ended June 27, 2020. IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week that ended June 27, 2020.

On September 28, 2020, Iowa Workforce Development mailed the September 28, 2020, reference 02, decision to the claimant's Mechanicsville, Iowa last-known address of record. The reference 02 decision denied benefits effective June 21, 2020, based on the deputy's conclusion that the claimant was not partially unemployed from Mercy Medical Center. The reference 02 decision stated the decision would become final unless an appeal was postmarked by October 8, 2020 or was received by the Appeal Section by that date. The claimant received the decision in a timely manner, prior to the deadline for appeal. Though the claimant asserts she filed an online appeal in response to the reference 02 decision, the Appeals Bureau did not

receive an appeal from the claimant by the October 8, 2020 appeal deadline or at point prior to August 12, 2021. The claimant is unable to provide the date or time of the alleged October 2020 appeal. The claimant asserts she received a confirmation email, but is unable to locate or provide a confirmation email concerning an appeal allegedly filed on or before October 8, 2020.

On August 5, 2021, Iowa Workforce Development mailed the August 5, 2021, reference 04, decision that held the claimant was overpaid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the week that ended July 27, 2020. The reference 04 decision erroneously stated the overpayment decision was based on a reference 01 decision. However, it was the September 28, 2020, reference 02, decision that prompted the FPUC overpayment decision. The reference 04 decision included an August 16, 2021 deadline for appeal.

On August 6, 2021, Iowa Workforce Development mailed the August 6, 2021, reference 03, decision to the claimant. The reference 03 decision held the claimant was overpaid \$277.00 in regular state benefits for the week that ended June 27, 2020, due to the September 2020 decision that denied benefits based on the able and available determination. The reference 03 decision included an August 16, 2021 deadline for appeal.

On August 12, 2021, the claimant filed an online appeal from the reference 03 overpayment decision. The Appeals Bureau treated the appeal as also a timely appeal from the August 5, 2021, reference 04, overpayment decision and a late appeal from the September 28, 2020, reference 02, disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

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 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 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 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the September 28, 2020, reference 02, decision. The claimant received the decision in a timely manner, prior to the October 8, 2020 deadline for appeal, and had a reasonable opportunity to file an appeal by the October 8, 2020 deadline. The weight of the evidence does not support the claimant's unsubstantiated assertion that she filed an online appeal by the October 8, 2020 appeal deadline. If the claimant had filed an appeal at that time, the Appeals Bureau would have record of the appeal, would have docketed the appeal, and would have set the matter for an appeal hearing. The weight of the evidence establishes that the claimant did not take any steps to file an appeal until the reference 03 and 04 decisions were mailed to her during the first week August 2021. In response to those decisions, the claimant filed the August 12, 2021 online appeal, which was then docketed and set for hearing. The evidence establishes the claimant unreasonably delayed filing her appeal from the September 28, 2020, reference 02, decision. Because the evidence indicates delay attributable to the claimant, and not attributable to IWD or the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the September 28, 2020, reference 02, decision that denied benefits effective June 21, 2020. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the September 28, 2020, reference 02, decision was untimely. decision that denied benefits effective June 21, 2020, based on the deputy's conclusion that the claimant was not partially unemployed from her employment with Mercy Medical Center, shall stand.



James E. Timberland
Administrative Law Judge

October 15, 2021
Decision Dated and Mailed

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