

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CRYSTAL L RIGGS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 22A-UI-10013-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/07/21  
Claimant: Appellant (4)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On April 20, 2022, Crystal Riggs (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 15, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire.

A telephone hearing was held on June 8, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-10013 and 22A-UI-10014 are related and were heard together, forming a single hearing record. Hy-Vee Inc (employer/respondent) was noticed on 22A-UI-10013 and participated by Store Manager Jared Lakar. Employer was represented by Hearing Rep. Barbara Buss.

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

**ISSUE(S):**

- I. Is the appeal timely?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the claimant able to and available for work?
- IV. Is the claimant still employed at the same hours and wages?
- V. Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

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

Claimant began working for employer in January 2020. She was hired as a part-time cashier with no guarantee of hours. She typically worked around 20 hours per week at a rate of \$10.00 per hour. She filed an original claim for benefits effective February 7, 2021. She filed weekly continued

claims through April 10, 2021. She was reporting her wages earned each week when filing claims for benefits. Claimant reported earning wages each week in an amount less than her weekly benefit amount plus \$15.00.

Claimant began at employer after being separated from her regular, full-time position at Walmart Inc. During the weeks in question claimant was able to work, available for work, and searching for full-time work and did leave employment with employer in April 2021 to accept full-time work elsewhere.

The Unemployment Insurance Decision was mailed to claimant at the above address on April 15, 2021. That was claimant's correct address at that time. Claimant did not receive the decision denying benefits and was unaware of the denial until she received a decision finding she was overpaid as a result. She promptly appealed that decision and the Appeals Bureau also set up an appeal of the underlying denial at that time.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated April 15, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant but without prejudice to respondent.

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."

The record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.1A(37) provides:

*"Total and partial unemployment"*.

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The administrative law judge finds claimant was partially unemployed and eligible for benefits in the weeks filed. This is because claimant was separated from her regular job at Walmart and earning in her part-time position with employer less than her weekly benefit amount plus \$15.00. During the weeks in question claimant was able to work, available for work, and searching for full-time work.

During the period in question claimant was still employed by employer in the same way as in the base period. As a result employer's account will not be charged for benefits paid.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated April 15, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant but without prejudice to respondent.

Claimant was partially unemployed and eligible for benefits effective February 7, 2021 and continuing through April 10, 2021. Employer's account shall not be charged for benefits paid during this period.



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Andrew B. Duffelmeyer  
Administrative Law Judge

June 9, 2022  
Decision Dated and Mailed

abd/abd