

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARRETT M WALKER

Claimant

APPEAL 22A-UI-07362-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC

Employer

OC: 03/29/20

Claimant: Appellant (1)

Iowa Code 96.6(2) – Filing – Timely Appeal

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

Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On March 24, 2022, Garrett Walker (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 16, 2021 (reference 01) that denied unemployment insurance benefits as of March 29, 2020 based on a finding that claimant requested and was granted a leave of absence.

A telephone hearing was held on May 9, 2022. The parties were properly notified of the hearing. Claimant participated personally. Prestage Foods of Iowa LLC (employer/respondent) did not appear or participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

The administrative record indicates the decision denying benefits was mailed to claimant at the above address on April 16, 2021. That was claimant’s correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by April 26, 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’s testimony on whether or not he received the decision was inconsistent. Claimant acknowledged having a poor memory. He initially stated he did receive the decision and believed he appealed it. He later stated he did not remember and didn’t believe he received it. Claimant appealed most recently after receiving decisions finding he was overpaid benefits. He appealed on March 24, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated April 16, 2021 (reference 01) that denied unemployment insurance benefits as of March 29, 2020 based on a finding that claimant requested and was granted a leave of absence 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's testimony on whether or not he received the decision was inconsistent and he acknowledged having a poor memory. On the other hand, the administrative record shows the decision was mailed to claimant at the correct address on April 16, 2021. The weight of the evidence is that claimant received the decision in a timely manner but did not appeal it before it became final. A good cause reason for delay in appealing has not been established. The administrative law judge must therefore 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.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated April 16, 2021 (reference 01) that denied unemployment insurance benefits as of March 29, 2020 based on a finding that claimant requested and was granted a leave of absence is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 11, 2022
Decision Dated and Mailed

abd/abd