

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW MCGUIRE
Claimant

**JOHNSTON COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 22A-UI-09924-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

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 Admin. Code r. 871-24.23(2)(I) – On-call Employment
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On April 19, 2022, Andrew McGuire (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 9, 2021 (reference 02) that denied unemployment insurance benefits as of April 12, 2020 based on a finding that claimant was still employed in an on-call job and not available for work within the meaning of the law.

A telephone hearing was held on June 24, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-09924, 22A-UI-09925, 22A-UI-09926, 22A-UI-09927, 22A-UI-09928, 22A-UI-09929, 22A-UI-09930, 22A-UI-09931, 22A-UI-09933 are related and were heard together. Johnston Community School District (employer/respondent) was noticed on Appeal Nos. 22A-UI-09924, 22A-UI-09925, and 22A-UI-09926 and participated by Benefits Specialist Kayla Badtram.

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

The Unemployment Insurance Decision was mailed to claimant at the address 9617 WHITE OAK LN UNIT 303 JOHNSTON IA 50131-2389 on March 9, 2021. That was claimant’s correct address at that time. Claimant did receive the decision in a timely manner. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development

Appeals Section by March 19, 2021. The decision further states that if it denies benefits and is not reversed on appeal it may result in an overpayment.

Claimant did not initially appeal the decision denying benefits because he erroneously believed a prior call with an IWD representative had resolved the matter. It appears this call was a fact-finding interview in February 2021. Claimant was prompted to appeal when he later received decisions dated March 20, 2022 finding he was overpaid as a result. Claimant filed an appeal on April 19, 2022. At that time the appeals bureau set up an appeal of this matter as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 9, 2021 (reference 02) that denied unemployment insurance benefits as of April 12, 2020 based on a finding that claimant was still employed in an on-call job and not available for work within the meaning of the law 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 received the decision in a timely manner and had a reasonable opportunity to file a timely appeal. Claimant did not initially appeal the decision denying benefits because he erroneously believed a prior call with an IWD representative had resolved the matter. It appears this call was a fact-finding interview in February 2021. While the administrative law judge is sympathetic to this reason, the subsequent March 9, 2021 decision is clear: benefits were denied, if it was not reversed on appeal it may result in an overpayment, and an appeal must be filed by March 19, 2021. Claimant did not heed those clear directives and has not otherwise established a good cause reason for the delay in appealing. The administrative law judge therefore concludes 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 March 9, 2021 (reference 02) that denied unemployment insurance benefits as of April 12, 2020 based on a finding that claimant was still employed in an on-call job and not available for work within the meaning of the law is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

June 29, 2022
Decision Dated and Mailed

abd/abd