

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CIARRA L BARTON
Claimant

**OAKMOOR RACQUETBALL HEALTH CTR
INC**
Employer

**APPEAL 21A-UI-03636-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (1)**

Iowa Code § 96.5(3) – Failure to Accept Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On January 23, 2021, Ciarra Barton (claimant/appellant) filed an appeal from the July 16, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 11, 2020 based on a finding claimant refused recall to suitable work.

A telephone hearing was held on March 30, 2021. The parties were properly notified of the hearing. Claimant participated personally. Oakmoor Racquetball Health Ctr Inc. (employer/respondent) participated by Director Robin Vannausdle.

Claimant's exhibits 1 and 2 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 Unemployment Insurance Decision was mailed to claimant at the above address on July 16, 2020. That was claimant's correct address at that time. Claimant did receive the decision around that time. Claimant did not appeal at that time because she was no longer applying for benefits and so did not believe she needed to appeal. She did not appeal until she received decisions in January 2021 finding she had been overpaid benefits based on the disqualification.

The decision states that claimant is not eligible to receive benefits and that it may result in an overpayment which claimant will be required to repay. The decision also states that it becomes final unless an appeal is filed by July 26, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The July 16, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 11, 2020 based on a finding claimant refused recall to suitable work is therefore a final decision 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 did not appeal at the time she received the decision because she was no longer applying for benefits and so did not believe she needed to appeal. However, the decision clearly states that claimant is not eligible to receive benefits from May 11, 2020 and that it may result in

an overpayment which claimant will be required to repay. The decision also states that it becomes final unless an appeal is filed by July 26, 2020.

The administrative law judge finds claimant had a reasonable opportunity to file a timely appeal but failed to do so because she did not closely review the decision and proceed accordingly. As such, the decision is final and the administrative law judge does not have jurisdiction to change it. The decision therefore remains in force.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The July 16, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 11, 2020 based on a finding claimant refused recall to suitable work is therefore a final decision and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 01, 2021
Decision Dated and Mailed

abd/ol

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>.