

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEBBIE L KNISLEY**  
Claimant

**DES MOINES – ST JOSEPH**  
Employer

**APPEAL 21A-UI-24016-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal of the January 5, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 15, 2020, as her unemployment occurred between academic years or terms from her educational employer, and she had reasonable assurance of employment between academic years or terms. The parties were properly notified of the hearing. A telephone hearing was held on December 29, 2021, and was consolidated with the hearing for appeals 21A-UI-24017-S2-T and 21A-UI-24018-S2-T. Claimant Debbie L. Knisley participated personally. Dale Knisley observed. Employer Des Moines – St. Joseph participated through Paul Jahnke. Claimant's Exhibit A and Employer's Exhibit 1 was received. Department's Exhibit D-1 was received. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant's appeal timely?

Did the claimant have reasonable assurance of employment between academic years or terms?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a lead bus driver. This employer is an educational institution. Claimant works during the school year and does not work during regular school breaks or between academic years or terms.

The 2019/2020 school year ended on or about May 23, 2020. Claimant knew that she was going to be returning as a bus driver for this 2020/2021 school year because it was implied she would return each year.

Claimant filed an initial claim for unemployment insurance benefits with an effective date of March 15, 2020. An unemployment insurance decision dated December 22, 2020, found claimant was eligible for unemployment insurance benefits. Employer appealed the decision, and an administrative law judge determined that claimant was eligible for benefits each week she filed a weekly claim, with the exception of the week ending March 21, 2020. See 21A-UI-

03091-AD-T. The decision has become final. An overpayment decision issued April 10, 2021, determined claimant was overpaid \$206.00 for the week ending March 21, 2020. Claimant has since paid the \$206.00 overpayment.

A disqualification decision was mailed to claimant's last known address of record on January 5, 2021. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 15, 2021. The appeal was not filed until October 27, 2021, which is after the date noticed on the disqualification decision. Claimant received the decision in the mail, but also received a decision around the same time from Iowa Workforce Development (IWD) that determined claimant was eligible for benefits from the same employer. Claimant spoke to the employer and believed she did not need to appeal the disqualifying decision. Employer appealed the decision allowing benefits and a hearing was held, leading claimant to believe that all outstanding issues had been addressed. When claimant received two overpayment decisions dated October 20, 2021, she promptly filed an appeal.

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

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

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes it is timely.

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, subsection 10, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Here, claimant received conflicting information regarding her eligibility for benefits and whether she needed to appeal a decision. Claimant promptly filed an appeal of the overpayment decisions. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant's unemployment occurred between academic years or terms from her educational employer, and she had reasonable assurance of employment between academic years or terms.

Iowa Code section 96.4(5) provides:

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

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

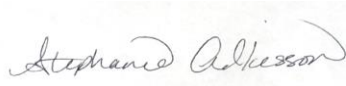
(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

In this case, the claimant did have reasonable assurance of employment for the 2020/2021 school year when the employer offered her employment. Therefore, benefits based on her service with employer cannot be paid to claimant for any week of unemployment which begins during the period between two successive academic years or terms. However, claimant's unemployment did not fall between academic years or terms. For each week claimant filed weekly claims for benefits, she was unemployed by employer. See 21A-UI-03091-AD-T. As a result, she is therefore eligible for benefits effective March 22, 2020.

Claimant is listed as a Group Code 8, which signifies that claimant was unemployed due to the COVID-19 pandemic. During the time of claimant's 2020 unemployment, the Agency had made the policy determination not to charge employers for unemployment insurance benefits paid to Group Code 8 claimants.

**DECISION:**

The January 5, 2021 (reference 01) decision is reversed. The claimant had reasonable assurance of returning to work the following academic year or term with this educational employer but was not unemployed and did not file for benefits between academic years or terms. Benefits are allowed effective March 22, 2020.



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Stephanie Adkisson  
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January 31, 2022  
Decision Dated and Mailed

sa/mh