

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICOLE C ROBERTS

Claimant

APPEAL NO. 20A-UI-11264-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEYSTONE SENIOR MANAGEMENT

Employer

OC: 03/29/20

Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 95.4(3) – Able & Available

STATEMENT OF THE CASE:

Nicole Roberts filed a late appeal from the July 6, 2020, reference 01, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Roberts requested and was granted a leave of absence, was voluntarily unemployed and was unavailable for work. After due notice was issued, a hearing was held on November 4, 2020. Ms. Roberts participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, KPY1, WAGE-A, the fact-finding interview cover sheet and the notice of claim/protest, and the July 6, 2020, reference 01, decision. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant the opportunity to submit date medical note from her doctor. Ms. Roberts submitted a medical note dated July 20, 2020, which note the administrative law judge received into the hearing record as Exhibit C.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicole Roberts established an original claim for benefits that was effective March 29, 2020. From the time Ms. Roberts established her original claim for benefits up through at least November 1, 2020, Ms. Roberts made weekly unemployment insurance claims by accessing the online claims reporting system via the Internet. For each of the weeks between March 29, 2020 and June 27, 2020, Ms. Roberts received weekly regular benefits, usually in the amount of \$437.00, and \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) benefits.

On July 6, 2020, Iowa Workforce Development mailed the July 6, 2020, reference 01, decision to Nicole Roberts at her last-known address of record. The address of record was a residence on 15th Street Northeast in Cedar Rapids, a residence that Ms. Roberts shared with her best friend. Ms. Roberts provided Iowa Workforce Development with that address when she

established the original claim for benefits that was effective March 29, 2020. Ms. Roberts did not update her address with IWD or with the post office until July 10, 2020.

The July 6, 2020 decision followed a June 26, 2020 cold-call, fact-finding interview. The deputy documented two attempts to reach Ms. Roberts at Ms. Roberts' telephone number of record and documented encountering a message that stated the number was not accepting calls at that time. Ms. Roberts advises that she did not receive the phone calls the deputy documented making to Ms. Roberts' phone number of record on June 26, 2020, but asserts her phone was operable at the time. Up to that time, IWD had been paying Ms. Roberts \$437.00 in weekly regular benefits and \$600.00 in weekly Federal Pandemic Unemployment Compensation. When the deputy was unable to reach Ms. Roberts, the deputy issued a "four-day letter" soliciting information from Ms. Roberts and then stopped payment of unemployment insurance benefits. Discontinuation of benefits did not prompt Ms. Roberts to contact IWD to inquire as to the reason why benefits had been stopped.

The decision that Iowa Workforce Development mailed to Ms. Roberts on July 6, 2020 denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Roberts requested and was granted a leave of absence, was voluntarily unemployed and unavailable for work. The decision stated that the decision would become final unless an appeal was postmarked by July 16, 2020 or was received by the Appeal Section by that date. Ms. Roberts advises that she did not receive the decision that was mailed to her address of record on July 6, 2020 and that she also did not receive the "four-day letter" that preceded it. On June 14, 2020, Ms. Roberts had moved out of the home on 15th Street and had moved to a new residence on 37th Street Northeast in Cedar Rapids. Ms. Roberts advises that her friend did not alert her about receiving any mail from Iowa Workforce Development and that the friend denied having received any correspondence when Ms. Roberts inquired about receiving mail at the old address.

Ms. Roberts began a new employment at Walmart during the first week of July 2020.

On July 10, 2020, Ms. Roberts accessed her claim record via the Iowa Workforce Development website and updated her address to reflect the new residence on 37th Street Northeast. Information indicating the claim was locked would have been included in the online record Ms. Roberts accessed on July 10, 2020 to make the address change. On or about July 10, 2020, Ms. Roberts also completed a change of address request with the United States Postal Service. These address updates came after the July 6, 2020 decision was mailed.

On August 28, 2020, after Ms. Roberts' claim had been without unemployment insurance benefits for two months, Ms. Roberts contacted Iowa Workforce Development about her claim. In connection with that contact, an IWD representative promptly emailed to Ms. Roberts a copy of the July 6 decision, front and back. That contact included discussion about proceeding with a late appeal. However, Ms. Roberts did not file an appeal that time.

Ms. Roberts asserts that she was hospitalized on August 29, 2020. Ms. Roberts asserts that she was without access to her cell phone during her time in the hospital. However, IWD records reflect that Ms. Roberts was able to use the Internet at 12:53 p.m. on August 30, 2020 to make a weekly unemployment insurance claim for the week that ended August 29, 2020. In other words, she had Internet access and was well enough to go through the several steps necessary to file a weekly claim. Ms. Roberts asserts that she was discharged from the hospital to home on September 5, 2020. Ms. Roberts asserts that as of September 5, 2020, the phone she had used to contact IWD on August 28, 2020, the phone she had used to receive and review the July 6, 2020 decision, had been turned off due to nonpayment. Ms. Roberts further asserts that she did not have home Wi-Fi Internet access at that time, because home Internet had not yet

been restored to her area of Cedar Rapids following the August 10, 2020 derecho. Ms. Roberts asserts that she could not file an appeal without accessing her email and without printing off materials. However, IWD records reflect that Ms. Roberts was able to use the Internet at 2:00 p.m. on September 9, 2020 to access the IWD website and make a weekly claim for the week that ended September 5, 2020. Ms. Roberts asserts that she regained email access on September 11, 2020. This is despite the IWD records reflecting ongoing Internet access. At 9:02 a.m. on September 13, 2020, Ms. Roberts accessed the IWD website to make a weekly claim for the week that ended September 12, 2020. At 15:43 p.m. on September 13, 2020, Ms. Roberts completed and transmitted an online appeal via the Iowa Workforce Development website. The Appeals Bureau received the electronically transmitted appeal on September 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was

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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

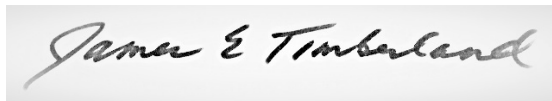
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record establishes an untimely appeal. Ms. Roberts provided testimony at the appeal hearing that was untruthful. That raises the question whether any of the testimony Ms. Roberts provided was credible. Even if one assumes Ms. Roberts' assertion that she did not receive the decision prior to August 28, 2020, the evidence establishes the reason for late receipt of the decision was Ms. Roberts' failure to take timely action to update her address with Iowa Workforce Development and/or the United States Postal Service. Even if one assumes that her assertion she did not receive the decision until it was emailed to her on August 28, 2020 is true, the evidence establishes unreasonable delay between the time she received the decision and the time she filed the appeal 16 days later on September 13, 2020. Ms. Roberts dishonestly asserted she was without the ability and means to file an appeal between August 29, 2020 and September 11, 2020. Her ability to use the Internet to make weekly claims on August 30, 2020 and September 9, 2020 directly refutes the false assertion. Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the July 6, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The July 6, 2020, reference 01, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was unavailable for work, shall stand.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available work within the meaning of the law during the period not governed by the July 6, 2020, reference 01, decision. The remand should also address separation from Walmart, which the claimant asserts occurred on July 17, 2020, and the separation from Keystone Senior Management, which the claimant asserts occurred on July 30, 2020.



James E. Timberland
Administrative Law Judge

December 18, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**