

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL KRAUS
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL NO. 22A-UI-01543-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Daniel Kraus, filed a late appeal from the December 2, 2021, reference 02, decision that denied benefits effective November 7, 2021, based on the deputy's conclusion that the claimant was unable to work due to illness. After due notice was issued, a hearing was held on February 8, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records, DBRO, KCCO, and the December 2, 2021, reference 02, decision.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant was able to work and available for work during the two-week period of November 14, 2021 through November 27, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Daniel Kraus, established an original claim for benefits that was effective March 21, 21 and an "additional claim" for benefits that was effective November 7, 2021. This present matter concerns the additional claim. Iowa Workforce Development set the weekly benefit amount at \$493.00. The claimant has at all relevant times been employed by Wells Enterprises, Inc. as a full-time production worker. The claimant's usual work days are Monday through Saturday. The claimant's start time is 3:20 a.m. The claimant's shift ends at 1:30 p.m. or 3:30 p.m.

The claimant established the November 7, 2021 additional claim in anticipation of a scheduled temporary shutdown of the claimant's work area for cleaning and maintenance, which shutdown was to be in effect from Sunday, November 14, 2021 through Friday, November 26, 2021. The shutdown period was to include the Thanksgiving holiday on November 25, 2021. The claimant made weekly claims for the benefit weeks that ended November 13, November 20 and November 27, 2021.

Prior to the scheduled shutdown, the claimant became ill with COVID-19. Thursday, November 4, 2021, was the claimant's last day at work before he commenced a period of time off due to illness. On November 5, 2021, the claimant submitted to COVID-19 testing at the workplace and immediately learned that he had tested positive for COVID-19. The claimant's symptoms included body ache, sore throat, and breathing difficulty. The claimant did not seek medical attention.

In connection with the illness and the positive COVID-19 test result, the claimant contacted the employer's third-party leave administrator, Prudential. Prudential approved the claimant for leave and for short-term disability benefits beginning November 6, 2021 through November 18, 2021, with a Friday, November 19, 2021 return to work date. The short-term disability benefits were 45 percent of the claimant's usual \$20.42 hourly wage. The employer did not require the claimant to undergo additional COVID-19 testing prior to returning to work. The claimant's health did not begin to improve until about a week after he tested positive for COVID-19. As of the November 19, 2021 return-to-work date provided by Prudential, the claimant was once again ready, willing and able to work. However, the workplace continued to be on short-term cleaning and maintenance shutdown through November 28, 2021.

The claimant returned to the full-time employment on Monday, November 29, 2021 or Tuesday, November 30, 2021. The claimant discontinued his weekly claims in connection with his return to work.

On December 2, 2021, Iowa Workforce Development mailed the December 2, 2021, reference 02, decision to the claimant's Le Mars last-known address of record. The reference 02 decision denied benefits effective November 7, 2021, based on the deputy's conclusion that the claimant was unable to work due to illness. The referenced 02 decision stated that the decision would become final unless an appeal was postmarked by December 12, 2021 or was received by the Appeals Section by that date. The reference 02 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 12, 2021 was a Sunday and the next working day was Monday, December 13, 2021. The claimant did not receive the decision in a timely manner. The United States Postal Service misdirected the correspondence to another address in Le Mars with same house number and street number. The claimant lives on 1st Avenue, but the correspondence was directed to an address on 1st Street. The claimant received the reference 02 decision on December 19, 2021 when the party who received the correspondence alerted the claimant to the correspondence. On December 19, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on December 19, 2021.

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

There is good cause to treat the claimant's December 19, 2021 late appeal from the reference 02 decision as a timely appeal. See Iowa Administrative Code rule 871-24.35(2) (regarding delay caused by Iowa Workforce Development and/or the United States Postal Service). The claimant was denied the opportunity to file an appeal by the December 13, 2021 effective deadline due to the United States Postal Service misdirecting the correspondence to another address. The claimant promptly filed an appeal on December 19, 2021 after being

alerted to the correspondence and receiving the correspondence that same day. Because the appeal was timely, the administrative has jurisdiction to enter a decision on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)(a) and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant did not meet the availability requirement during the weeks that ended November 13 and November 20, 2021 and is not eligible for benefits for those two weeks. During all of the first week and almost all of the second week, the claimant was off work due to illness and pursuant to an approved leave of absence. During the week that ended November 27, 2021, the claimant was able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for the week that ended November 27, 2021, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for the week that ended November 27, 2021.

DECISION:

The claimant's appeal from the December 2, 2021, reference 02, decision was timely. The reference 02 decision is modified in favor of the claimant/appellant as follows. The claimant did not meet the availability requirement during the weeks that ended November 13 and November 20, 2021 and is not eligible for benefits for those two weeks. During the week that ended November 27, 2021, the claimant was able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for the week that ended November 27, 2021, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for the week that ended November 27, 2021.



James E. Timberland
Administrative Law Judge

March 7, 2022
Decision Dated and Mailed

jet/mh