

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA S DIPPLE
Claimant

KWIK TRIP INC
Employer

**APPEAL 21A-UI-06595-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/24/20
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On February 23, 2021, Amanda Dipple (claimant/appellant) filed an appeal from the July 27, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was still employed for the same hours and wages.

A telephone hearing was held on May 11, 2021. The parties were properly notified of the hearing. Claimant participated personally. Kwik Trip Inc. (employer/respondent) participated by Store Leader Marci Severson.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant filed a claim for benefits in the weeks ending May 30 and June 6, 2020; December 19 and 26, 2020; and January 2, 2021. Claimant was ill with COVID-related symptoms and unable to work during these weeks. The administrative record shows claims for benefits were also filed in the weeks ending April 17 and 24, 2021, although claimant testified that she did not file claims in those weeks. Claimant was employed and working full-time during these weeks.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 27, 2020. That was claimant's correct address at that time. Claimant did not appeal at that time because she called the department and was told her claim would be refiled as a claim for

Pandemic Unemployment Assistance and she did not need to appeal. Claimant was prompted to appeal when she received an overpayment decision dated February 15, 2021. She appealed shortly thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 27, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was still employed for the same hours and wages is MODIFIED with no change in effect.

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.”

The administrative law judge finds the delay in appealing was due to agency error or misinformation which led claimant to believe she did not need to appeal. She did appeal shortly after learning there was an issue. Claimant’s appeal is therefore timely and the administrative law judge has jurisdiction to address the underlying issues.

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".

Claimant filed a claim for benefits in the weeks ending May 30 and June 6, 2020; December 19 and 26, 2020; and January 2, 2021. Claimant was ill with COVID-related symptoms and unable to work during these weeks. She is therefore ineligible for benefits in those weeks.

The administrative record shows claims for benefits were also filed in the weeks ending April 17 and 24, 2021, although claimant testified that she did not file claims in those weeks. Claimant was employed and working full-time during these weeks. She is therefore ineligible for benefits in those weeks as well, as she was employed to such an extent as to be unavailable for other work.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 27, 2020 (reference 01) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was still employed for the same hours and wages is MODIFIED with no change in effect. Claimant was unable or unavailable for work during the weeks filed and therefore ineligible for benefits.



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

May 19, 2021
Decision Dated and Mailed

abd/scn

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>.