

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLI I PARKER
Claimant

APPEAL 22A-UI-04233-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**INDIANOLA COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 06/27/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Kelli R. Parker, filed an appeal from the September 13, 2021 (reference 01) initial decision that denied benefits. After proper notice, a telephone hearing was held on March 24, 2022. The hearing was held with Appeals 22A-UI-04230-JC-T, 22A-UI-04234-JC-T, 22A-UI-04235-JC-T and 22A-UI-04236-JC-T. The claimant participated personally. The employer participated through Shelley Royer, assistant business manager. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did the claimant have reasonable assurance of continued employment in the next school year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: This employer is an educational institution. Claimant has worked since 2016 and is an associate with the kindergarten class. She works approximately 32 hours per week. Claimant's work agreement did not include summers. Employer sent claimant a contract (letter of agreement) for her position for the 2021/2022 school year. Claimant signed the contract on May 18, 2021. The school year ended (claimant was paid through) on May 28, 2021.

The school was closed for the customary summer break from May 29, 2021 until August 22, 2021. The claimant returned to work on August 23, 2021 when the fall term resumed. Claimant understood that she would be returning after the customary summer break and did return after the break in her regular position. Claimant has no other wages in her base period.

An initial unemployment insurance decision (Reference 01) resulting in a denial was mailed to claimant's last known address of record on September 13, 2021. The decision contained a

warning that an appeal must be postmarked or received by the Appeals Bureau by September 23, 2021. Claimant did not receive the decision. Claimant was checking her mail at her address but not living there. Claimant learned of the unfavorable decision upon receipt of February 1, 2022 decisions regarding overpayments. Claimant timely appealed the overpayment decisions on February 7, 2022 (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decisions, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge affirms the initial decision:

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.

(emphasis added).

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.

Iowa Admin. Code r. 871-24.52(6) provides:

(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the **denial of the use of such wage credits**. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

(emphasis added).

In this case, the claimant did not perform work June 27, 2021, until she returned to work for the fall term on August 23, 2021. However, the claimant was not scheduled to work during the customary summer break recess period. She understood that her contract provided she would not work and would not be paid for these dates while school was not in session. Claimant returned to her regular position with the school district after the customary recess period. As such, benefits are denied as the claimant had reasonable assurance to return to her regular position after the break and her unemployment occurred during a customary recess. See Iowa Code § 96.4(5).

Further, the claimant does not have sufficient other non-educational wages credits in which to become monetarily eligible for regular State of Iowa funded unemployment insurance benefits. Benefits are denied.

DECISION:

The September 13, 2021 (reference 01) decision is AFFIRMED. The appeal is timely. The claimant's unemployment occurred during the employer's customary recess and the claimant had reasonable assurance to return to the position following the customary recess pursuant to Iowa Code § 96.4(5). As such, benefits are denied effective June 27, 2021.



Jennifer L. Beckman
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April 5, 2022
Decision Dated and Mailed

jlb/mh