

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF C BUSBY
Claimant

APPEAL 22A-UI-07621-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 12/27/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.19(38), 96.1A(37) – Total, partial, temporary unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On March 30, 2022, Jeff Busby (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 19, 2021 (reference 01) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and could not be considered partially unemployed.

A telephone hearing was held on May 11, 2022. The parties were properly notified of the hearing. Appeal Nos. 22A-UI-07621-AD-T, 22A-UI-07622-AD-T, and 22A-UI-07623-AD-T were related and heard concurrently, forming a single hearing record. Claimant participated personally. Dee Zee Inc (employer/respondent) participated by HR Generalist Lacey Little.

The proposed exhibits were not admitted for the reasons stated on the record. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on April 19, 2021. That was claimant’s correct address at that time. Claimant did receive the decision around that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by April 29, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

The delay in appealing was due to claimant believing the decision was a mistake and he therefore did not need to appeal it. Claimant was prompted to appeal when he later received decisions finding he was overpaid benefits as a result. The appeal was filed on March 30, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated April 19, 2021 (reference 01) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and could not be considered partially unemployed is therefore final and remains in force.

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.”

Claimant received the decision in a timely manner and had a reasonable opportunity to file a timely appeal. Claimant chose not to appeal because he believed the decision was a mistake and he therefore did not need to appeal it. This is not a good cause reason for delay and the administrative law judge therefore finds the appeal is untimely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant’s appeal was untimely. The decision dated April 19, 2021 (reference 01) that denied unemployment insurance benefits as of December 27, 2020 based on a finding that claimant was still employed for the same hours and wages as in the contract of hire and could not be considered partially unemployed is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 13, 2022
Decision Dated and Mailed

abd/abd