

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GENET W GEBREMEDHIN
Claimant

DEE ZEE INC
Employer

APPEAL 22R-UI-05431-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On October 12, 2021, Genet Gebremedhin (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated August 31, 2020 (reference 01) that denied unemployment insurance benefits as of May 3, 2020 based on a finding claimant was unable to perform work due to illness.

Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for December 7, 2021. Claimant did not call the toll-free number listed on the hearing notice at the time of the hearing. As such no hearing was held and a default decision was issued. Claimant appealed the default decision to the Employment Appeal Board, which remanded for a new hearing.

A telephone hearing was held on April 12, 2022. The parties were properly notified of the hearing. Claimant participated personally and with the assistance of a Tigrinya-language interpreter. Claimant was represented by non-attorney representative Kidane Mehari. Dee Zee Inc (employer/respondent) participated by HR Assistant Molly Reilly.

Employer’s Exhibit 1 was admitted. 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 address 3809 UNIVERSITY AVE APT 16 DES MOINES IA 50311-3654 on August 31, 2020. That was claimant’s correct address at that time. Related decisions finding claimant was overpaid benefits were issued on July 29, 2021 and sent to the same address. That was still claimant’s correct address at that time. She received those decisions as well.

Claimant was unable to state with specificity when she received the decisions. Claimant was unable to read and understand the decisions due to a language barrier. She would typically take pictures of documents she received from IWD and send them to Mr. Mehari, who was a member of claimant's church and had taken it upon himself to attempt to assist her. Claimant did not finally file an appeal until October 12, 2021, when Mr. Mehari filed it on her behalf.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated August 31, 2020 (reference 01) that denied unemployment insurance benefits as of May 3, 2020 based on a finding claimant was unable to perform work due to illness 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.”

The administrative law judge finds claimant received the August 31, 2020 decision in a timely manner. While some delay in appealing is excusable given claimant's language barrier, a delay of over a year is not reasonable. And while Mr. Mehari had taken it upon himself to attempt to assist claimant, it was ultimately her responsibility to take steps to understand the decision and then appeal it in a timely manner if she disagreed with it. Claimant has not established a good cause reason for the over year-long delay in appealing and the administrative law judge therefore concludes the appeal is not timely. 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 August 31, 2020 (reference 01) that denied unemployment insurance benefits as of May 3, 2020 based on a finding claimant was unable to perform work due to illness is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

April 15, 2022
Decision Dated and Mailed

abd/jh