

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY D UPCHURCH
Claimant

TMONE LLC
Employer

APPEAL 20A-UI-08883-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On July 23, 2020, Anthony D. Upchurch (claimant) filed an appeal from the June 17, 2020, reference 03, unemployment insurance decision that denied benefits effective March 15, 2020, based upon the determination he was still employed in the same hours and wages with TMONE LLC (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on September 11, 2020. The claimant and Letisha Molina, his roommate, participated. The employer participated through Molly Meister, Executive Admin. The Department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the claimant's claim and wage histories.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began a leave of absence with the employer effective March 16, 2020. The claimant permanently separated from employment on April 4. Whether the claimant's separation from the employer qualifies him for unemployment insurance benefits and whether he is able to and available for work effective April 5 have not yet been addressed by the Benefits Bureau.

The claimant filed his claim for benefits effective March 15. The claimant has only reported \$1 in wages earned for the week ending April 25 while filing weekly claims for benefits from April 5 through September 5. However, the claimant's wage history shows Team Staffing Solutions reported that he earned \$890 in wages during the second quarter of 2020. Whether the claimant was employed with Team Staffing Solutions after March 15 and accurately reported wages earned has not yet been addressed by the Integrity Bureau. If the claimant was

employed by Team Staffing Solutions, whether his separation from them qualifies him for benefits has not yet been addressed by the Benefits Bureau.

On June 17, Iowa Workforce Development (agency) mailed a disqualification decision to the claimant's last known address of record. He received the decision within ten days on or about June 21. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 27. The appeal was not postmarked until July 23, which is after the date noticed on the disqualification decision. The claimant did not have any explanation for the delay in filing the appeal.

REASONING AND CONCLUSIONS OF LAW:

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

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant filed the appeal after the deadline, and he has not established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The June 17, 2020, reference 03, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision denying benefits effective March 15, 2020, based the claimant's status as still employed in the same hours and wages remains in effect.

REMANDS:

Whether the claimant's separation from TMONE, LLC, on or about April 4, qualifies him for unemployment insurance benefits, and whether he is able to and available for work effective April 5 are remanded to the Benefits Bureau for a fact-finding interview with notice to both parties followed by an unemployment insurance decision with appeal rights.

Whether the claimant was employed by Team Staffing Solutions during the second quarter of 2020, and whether he correctly reported wages earned while filing his claims for unemployment insurance benefits are remanded to the Integrity Bureau for investigation.

If the claimant was employed by Team Staffing Solutions after March 15, whether his separation from that employment qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau for a fact-finding interview with notice to both parties followed by an unemployment insurance decision with appeal rights.



Stephanie R. Callahan
Administrative Law Judge

September 15, 2020
Decision Dated and Mailed

src/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.