

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SHANNON C CHRISTY**  
Claimant

**D M MARBLE & MANTEL CO**  
Employer

**APPEAL NO. 20A-UI-13650-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Shannon Christy filed a late appeal from the May 5, 2020, reference 01, decision that denied benefits for the week that ended March 28, 2020, based on the deputy's conclusion that the claimant was out of town for the majority of the week and did not meet the availability requirement. After due notice was issued, a hearing was held on December 30, 2020. Mr. Christy participated. The employer did not provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-03651-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), of the May 4, 2020, fact-finding materials, of the May 5, 2020, reference 01, decision, and of the October 28, 2020, reference 02, overpayment decision.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.  
Whether the claimant was available for work within the meaning of the law during the week that ended March 28, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Des Moines Marble & Mantel Company as a full-time tile setter. The claimant usually works eight hours a day, 7:30 a.m. to 4:00 p.m., Monday through Friday. The business owner, Mario DeMarco, is the claimant's supervisor. The claimant's wage for the last year has been \$26.00 an hour. The claimant requested Wednesday, March 25 through Friday, March 27, 2020 off work. The claimant's young adult daughter was attending college in Colorado and was experiencing anxiety in the context of the COVID-19 pandemic. The claimant requested the time off so that he and his wife could travel to Colorado to assist and comfort their daughter. The employer approved the request for time off, even though the employer had full-time work for the claimant that week. The claimant had worked full shifts on Monday and Tuesday of that week, for which he earned \$416.00. The claimant left for Colorado on

Wednesday, March 25, 2020 and returned to Iowa in time to report for work the following Monday.

The claimant established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the claimant's weekly benefit amount at \$500.00. The claimant made weekly claims that included a claim for the week that ended March 28, 2020. When the claimant made claim for that week, he accurately reported the \$416.00 he earned for that week. Iowa Workforce Development paid the claimant \$209.00 in regular benefits for that week.

On May 4, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview in which the claimant participated. The claimant told the deputy about his request for time off for March 25 through March 27, 2020 so that he could go see his daughter in Colorado.

On May 5, 2020, Iowa Workforce Development mailed the May 5, 2020, reference 01, decision to the claimant his last known address of record. The decision was mailed from the Des Moines to the claimant's in Urbandale. The claimant received the decision in a timely manner, likely within a couple days of the mailing date. The decision denied benefits for the week that ended March 28, 2020, based on the deputy's conclusion that the claimant was out of town for the majority of the week and did not meet the availability requirement. The decision allowed benefits for the period beginning March 29, 2020, provided the claimant was otherwise eligible. The decision stated that it would become final unless an appeal was postmarked by May 15, 2020 or received by the Appeals Bureau by that date. The decision included clear and concise instructions for filing an appeal. The claimant did not take steps to file an appeal by the May 15, 2020 appeal deadline.

On October 28, 2020, Iowa Workforce Development mailed an October 28, 2020, reference 02, overpayment decision to the claimant. The overpayment decision held that the claimant was overpaid \$209.00 in regular benefits for the week that ended March 28, 2020, based on the May 5, 2020 decision. The claimant received the overpayment decision on October 28, 2020 and filed an online appeal from the overpayment decision on October 30, 2020. The Appeals Bureau treated the appeal from the overpayment decision as also an late appeal from the May 5, 2020, reference 01, decision that denied benefits for the week that ended March 28, 2020.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for

benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant's appeal from the May 5, 2020, reference 01, decision was untimely. The claimant had a reasonable opportunity to file an appeal by the applicable May 15, 2020 deadline, but waited until after receipt of the October 28, 2020 associated overpayment decision to file an appeal. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). Because the delay in filing the appeal was attributable to the claimant, rather than the result of error or misinformation from IWD or delay or other action of the United States Postal Service, there is not good cause under the law to treat the late appeal from the May 5, 2020, reference 01, decision as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from the May 5, 2020,

reference 01, decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision.

Even if the appeal from the May 5, 2020, reference 01, decision had been timely, the evidence would still have established that the claimant did not meet the availability requirement for the week that ended March 28, 2020 and was not eligible for benefits for that week.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Even if the appeal from the May 5, 2020, reference 01, decision had been timely, the evidence indicates that the claimant was on a brief leave of absence, out of town, and unavailable for work for the majority of the week that ended March 28, 2020. Under those circumstances, the claimant would not have met the availability requirements and would not be eligible for benefits.

**DECISION:**

The claimant appeals was untimely. The May 5, 2020, reference 01, decision that denied benefits for the week that ended March 28, 2020, based on the deputy's conclusion that the claimant was out of town for the majority of the week and did not meet the availability requirement. remains in effect.



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James E. Timberland  
Administrative Law Judge

January 19, 2021  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law for the week that ended March 28, 2020. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**