

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSIE M AGUINIGA
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 21A-UI-22911-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/31/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On October 14, 2021, Josie Aguiniga (claimant/appellant) filed an appeal from the decision dated March 30, 2021 (reference 02) that denied benefits as of October 18, 2020 based on a finding claimant's unemployment occurred between academic years or terms.

A telephone hearing was held on December 9, 2021. The parties were properly notified of the hearing. Claimant participated personally. Des Moines Ind Community Sch Dist (employer/respondent) participated by Rhonda Waggoner. Before and After School District Coordinator Bobbie Jo Sheridan participated as a witness for employer.

The parties agreed to waive the 10-day notice period on the issue of whether the appeal was timely. The issue was erroneously excluded from the hearing notice.

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 March 30, 2021. That was claimant's correct address at that time. Claimant did not receive that decision. However, claimant did receive a decision dated August 24, 2021, which found claimant was overpaid benefits due to a prior decision which reduced her weekly maximum benefit amount.

The August 24, 2021 decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 3, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on October 14, 2021. Claimant did not appeal

until that time because she forgot about the deadline to appeal. She finally appealed later when she received statements from the Department listing the overpayment amount.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 30, 2021 (reference 02) that denied benefits as of October 18, 2020 based on a finding claimant's unemployment occurred between academic years or terms 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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. However, claimant did receive a decision dated August 24, 2021, which found claimant was overpaid benefits due to a prior decision which reduced her weekly maximum benefit amount. This put claimant on notice that there was an issue with her claim and a deadline to appeal if she disagreed. If claimant had appealed at that time the administrative law judge would have found the appeal timely. But claimant did not take further action until October 14, 2021, well over a month later, because she forgot. Forgetting does not constitute good cause for the delay in appealing. 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 March 30, 2021 (reference 02) that denied benefits as of October 18, 2020 based on a finding claimant's unemployment occurred between academic years or terms is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 17, 2021
Decision Dated and Mailed

abd/abd

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.