

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINA BICKHAM
Claimant

RESIDENTIAL ALTERNATIVE OF ILLINO
Employer

APPEAL 21A-UI-11932-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/26/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On April 19, 2021, Tina Bickham (claimant/appellant) filed an appeal from the August 20, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant was not able to perform work due to illness.

A telephone hearing was held on July 19, 2021. The parties were properly notified of the hearing. Claimant participated personally. Residential Alternative of Illino (employer/respondent) was not available at the number registered for the hearing and did not participate. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. 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 2260 9TH ST APT 9, CORALVILLE IA 52241 on August 20, 2020. That was not claimant's correct address at that time. Claimant moved from that address in June 2020 and never received the decision. Claimant was unaware there was an issue with her eligibility until she received an overpayment decision in mid-April 2021. She appealed shortly after receiving that decision.

Claimant began working for employer in March 2019. She was employed part-time but often picked up additional shifts so that she was working full-time or more. Claimant contracted COVID-19 and employer held her out of work from April 26, 2020 through May 30, 2020. Claimant was not too ill to work and was available for work during this time. She returned to her part-time position

at that time but only worked two or three days a week. She stopped picking up additional available shifts because she was easing her way back into working.

Claimant filed a claim for benefits each week from the benefit week ending May 2, 2020 through the benefit week ending August 22, 2020. She reported her wages earned each week. Claimant was not employed elsewhere during the weeks filed. She left employment with Premier Estates 506, LLC around January 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The August 20, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant was not able to perform work due to illness is MODIFIED in favor of appellant. She is eligible for benefits as set forth below.

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. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. Claimant's appeal is therefore timely, and the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

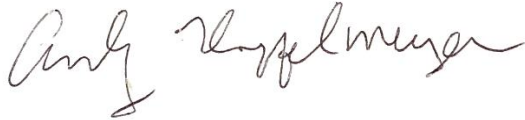
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (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".

The administrative law judge finds claimant was able and available for work and eligible for benefits from the week ending May 2, 2020 through the week ending May 30, 2020. This is because she was not too ill to work and was available for work during this time. She was not working because her employer at the time was holding her out of work.

However, she is not eligible for benefits from the week ending June 6, 2020 through the week ending August 22, 2020. This is because there was additional work available for claimant during this time but she chose not to make herself available for that. Because claimant was limiting her availability for work during those weeks, she is not eligible for benefits in those weeks.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The August 20, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant was not able to perform work due to illness is MODIFIED in favor of appellant. She is eligible for benefits as set forth above.



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

July 30, 2021
Decision Dated and Mailed

abd/lj

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>.