

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY A HUENEKE
Claimant

APPEAL 21A-UI-23467-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION

DUBUQUE HOLY FAMILY CATHOLIC
Employer

OC: 04/05/20
Claimant: Appellant (1)

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 § 96.4(5) – Reasonable Assurance
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Tammy A. Hueneke, filed an appeal from the December 10, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2021. The hearing was held together with Appeals 21A-UI-UI-23468_JC-T and 21A-UI-23470-JC-T. The claimant participated. The employer was represented by Paul Jahnke, hearing representative. Mary Sulentic testified for the employer. At the time of the hearing, both parties waived notice on the issues of whether claimant was able to and available for work, whether she was considered totally, temporarily or partially unemployed and employer chargeability.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal?:
Is the claimant able to and available for work effective April 5, 2020?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?
Did the claimant have reasonable assurance of continued employment in the next school year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount is \$367.00. Most recently, claimant has worked as a full-time site nutritional supervisor for the employer. Her position is a year round position, unlike the affiliated school, which has customary breaks and recesses. Claimant signs a yearly contract of hire, but has continuous employment without any breaks.

Claimant filed for unemployment insurance benefits for a seven week period between April 5, 2020 and May 23, 2020 when she was laid off or worked reduced hours. Employer reduced hours and staggered employees to mitigate exposure to the COVID-19 virus. Claimant worked all available hours.

Claimant customarily worked 40 hours, earning \$14.48 per hour. The employer reported the following hours:

For the week ending, April 11, 2020, claimant worked 5.12 hours.
For the week ending April 18, 2020, claimant worked 16.21 hours.
For the week ending April 25, 2020, claimant worked 10.66 hours.
For the week ending May 2, 2020, claimant worked 16.78 hours
For the week ending May 9, 2020, claimant worked 10.52 hours.
For the week ending May 16, 2020, claimant worked 17.41 hours.
For the week ending May 23, 2020, claimant worked 12.24 hours and was paid 8 hours of holiday pay.

An initial decision dated December 10, 2020 was mailed to claimant's address of record. The decision contained a warning that an appeal must be filed by December 20, 2020. Claimant had a fact-finding interview on December 3, 2020, prior to the December 10, 2020 decision being mailed. The initial decision directed parties to contact the Customer Service Line with questions. Employer attempted to file an appeal in response to the decision (even though it was favorable) and to support claimant, but did not follow instructions for filing an appeal and did not follow up with IWD when no response was received.

Claimant did not contact IWD about the decision on her behalf when it was received. Claimant did not file an appeal until October 20, 2021 after receiving the overpayments dated October 11, 2021. See Department Exhibit 1. There is no evidence the appeal was delayed due to agency or postal service error.

REASONING AND CONCLUSIONS OF LAW:

The issue to address is whether the appeal is timely.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law was *not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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 December 10, 2020 (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman

Jennifer L. Beckman
Administrative Law Judge
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January 20th, 2022
Decision Dated and Mailed

jlb/rs

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.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>