

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH E HARE
Claimant

BITUMA CORP
Employer

APPEAL 20A-UI-00565-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/08/19
Claimant: Appellant (6)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment
Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On January 21, 2020, Joseph Hare (claimant/appellant) filed an appeal from the December 30, 2019 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on February 5, 2020, at 2 p.m. The parties were properly notified of the hearing. Claimant participated personally. Employer did not register a number for the hearing and did not participate.

Department's Exhibit D-1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

Is the appeal timely?

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? Is the claimant an on-call worker? Is the claimant able to and available for work?

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 December 30, 2019. That was claimant's correct address on that date. The decision states that

it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 9, 2020. Claimant appealed the decision online on January 21, 2020.

Claimant was out of town on vacation from December 23, 2019 to January 5, 2020. He did not check his mail until January 6, at which time he read the decision informing him that he had been denied benefits. He did see that he had until January 9 to appeal the decision. Claimant had also spoken with an HR representative of employer around December 19, 2019, who had informed claimant that employer would have to protest his unemployment claim because he had filed too early. However, claimant did not file an appeal until coworkers who had also been temporarily laid-off and filed for benefits began to receive their benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was not timely. Because the appeal is not timely, the administrative law judge is without jurisdiction to change the decision of the representative. Therefore, the December 30, 2019 (reference 01) unemployment insurance decision that denied benefits remains in effect.

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."

Claimant had four days to submit an appeal between the date he received the decision and the appeal deadline. The delay in filing an appeal was due to claimant's inaction, not due to agency error or misinformation or delay by the United States Postal Service. Claimant had a reasonable opportunity to assert an appeal but failed to do so. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Because the appeal is not timely, the administrative law judge is without jurisdiction to change the decision of the representative. Therefore, the December 30, 2019 (reference 01) unemployment insurance decision that denied benefits remains in effect. The appeal is dismissed.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn