

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINCOLN A SCHAFTNER ACKERSON
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL 22A-UI-06821-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 14, 2022, Lincoln Schaftner Ackerson (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 2, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on November 15, 2019 for excessive unexcused absenteeism.

A telephone hearing was held on May 2, 2022. The parties were properly notified of the hearing. Claimant participated personally and was represented by Attorney Kimberly Auge. Manpower International Inc (employer/respondent) participated by Senior Recruiter Gail Gonyaw.

Appeal Nos. 22A-UI-06821-AD-T, 22A-UI-06822-AD-T, 22A-UI-06824-AD-T, AND 22A-UI-06825-AD-T were heard together and formed a single record. No exhibits were offered or admitted. 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 2, 2021. That was claimant’s correct address at that time and he did receive the decision around that time. The decision warns that if it denies benefits and is not reversed on appeal it may result in an overpayment. It further warns that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 12, 2021.

Claimant did not appeal until March 14, 2022. The delay in appealing was due to claimant’s belief that the benefits he received were unrelated to employer and so the denial decision relating to

employer did not impact his eligibility for benefits. Claimant believed he was only filing for benefits with regard to another employer.

A decision was subsequently issued on May 14, 2021 (reference 02) to which this other employer was a party. That decision determined claimant was eligible for benefits effective April 19, 2020 so long as he meet all other eligibility requirements. Claimant was prompted to appeal when he received later decisions in March 2022 finding he was overpaid benefits.

A decision was issued on March 15, 2021 finding claimant eligible for Pandemic Unemployment Assistance (PUA) in the amount \$481.00 per week effective April 19, 2020. It does not appear PUA or related Federal Pandemic Unemployment Compensation or Lost Wage Assistance Payments have yet issued.

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 2, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on November 15, 2019 for excessive unexcused absenteeism 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.”

Claimant received the decision in a timely manner and the delay in appealing was not due to error or misinformation attributable to IWD. The delay was due to claimant’s erroneous belief that the decision did not impact his eligibility for benefits. However, the decision is clear in denying benefits and warning that an overpayment may result unless a timely appeal is taken.

The other decision which listed another employer as a party and allowed benefits was issued two months later and so could not have impacted claimant’s decision to not timely appeal the earlier decision. Notably, that decision also was clear in that it allowed benefits so long as claimant was otherwise eligible.

The claimant had a reasonable opportunity to file a timely appeal and has not established a good cause reason for failing to do so. The appeal is therefore untimely. Because it is untimely the decision has become final and the administrative law judge does not have jurisdiction to change it.

The administrative law judge notes that claimant was allowed PUA during the same period and in the same weekly benefit amount as when he was receiving UI. It does not appear PUA or related Federal Pandemic Unemployment Compensation or Lost Wage Assistance Payments have yet issued. Because of this claimant should ultimately “break even” once those PUA and related FPUC and LWAP amounts are paid and all overpayments are settled. This is addressed further in the related overpayment matters.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated March 2, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on November 15, 2019 for excessive unexcused absenteeism is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

May 4, 2022
Decision Dated and Mailed

abd/abd