

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY D SCHEFFELMAN
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-14474-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Anthony D Scheffelman., the claimant/appellant, filed an appeal from the November 24, 2020, (reference 02) unemployment insurance decision that denied benefits as of August 30, 2020. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2021. Mr. Scheffelman participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Scheffelman's appeal filed on time?
Is Mr. Scheffelman able to and available for work effective August 30, 2020?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Scheffelman at the correct address on November 24, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by December 4, 2020. Mr. Scheffelman did not receive the decision in the mail.

Iowa Workforce Development issued a different decision, dated June 22, 2021, that concluded Mr. Scheffelman because he was discharged from work for violation of a known company rule. Mr. Scheffelman filed an appeal via online on June 24, 2021. The appeal was received by Iowa Workforce Development on June 24, 2021.

The administrative law judge further finds: Mr. Scheffelman began working for the employer in October 2019. He worked as a full-time picker in the employer's warehouse.

In late August 2020, Mr. Scheffelman was exposed to someone who tested positive for COVID-19. The employer's policy required employees who were exposed to someone who tested positive for COVID-19 to self-quarantine for 14 days. Mr. Scheffelman self-quarantined from

about August 23 through September 5. Mr. Scheffelman returned to work on, or about, September 7.

In late November, Mr. Scheffelman was exposed to someone who tested positive for COVID-19 twice. He self-quarantined from about November 22 through December 19. Mr. Scheffelman returned to work on, or about, December 21.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Mr. Scheffelman's appeal was filed on time.

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Mr. Scheffelman did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When Mr. Scheffelman received the June 22, 2021 decision and learned that he was not eligible for benefits, he timely appealed. Mr. Scheffelman's appeal was filed on time.

The administrative law judge further concludes Mr. Scheffelman is able to and available for work effective August 30, 2021.

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".

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached

to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Mr. Scheffelman has established that he was not sick and able to and available for work. However, he did not work August 23, 2020 through September 5, 2020, and from November 22, 2020 through December 19, 2020 because the employer's policy required him not attend work due to exposure to someone who had tested positive for COVID-19. Since Mr. Scheffelman was able to and available for work effective August 30, 2020, regular, state-funded unemployment insurance benefits are allowed.

DECISION:

Mr. Scheffelman's appeal was filed on time. The November 24, 2020, (reference 02) unemployment insurance decision is reversed. Mr. Scheffelman is able to and available for work effective August 30, 2020. Benefits are allowed.



Daniel Zeno
Administrative Law Judge
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August 24, 2021
Decision Dated and Mailed

dz/kmj