

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**NICHOLAS HINRICHS**  
Claimant

**CUSTOM-PAK INC**  
Employer

**APPEAL 20A-UI-14244-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19  
Claimant: Appellant (1)**

---

Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

On November 3, 2020, claimant appealed the representative's October 23, 2020, decision (reference 01), that denied benefits because it determined he was not available to work as of April 5, 2020 due to requesting and being granted a leave of absence. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on January 7, 2021. The claimant participated personally. The employer participated through Human Resources Generalist Erin Fulton. Judicial notice was taken of the administrative records.

**ISSUES:**

1. Whether the claimant filed a timely appeal? Whether there is good cause to treat the appeal as timely?
2. Whether the claimant is available for work? Whether the claimant was on an approved leave of absence?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On August 14, 2012, the claimant started working for the employer as a full-time process technician. The claimant's hourly wage is \$19.25 per hour. The claimant's immediate supervisor is Group Leader Todd Knutson.

In the aftermath of the Covid19 pandemic, the employer developed a practice in which employees could inform its human resources department about concerns related to Covid19 and they could remain absent without accruing attendance points. Employees were also required to provide a doctor's note justifying their absence.

On April 3, 2020, the claimant called the employer's human resources department and spoke with Human Resources Manager Andrea Lawrence about using the practice. The claimant explained to Ms. Lawrence that his son has a compromised immune system and as a result has

a much higher Covid19 mortality and infection risk. Ms. Lawrence approved the claimant's absence under the Covid19 pandemic practice.

On May 4, 2020, the employer received notice from Iowa Workforce Development that if employees were on leave due to concerns regarding Covid19, they would be considered as voluntarily quitting. The employer started calling employees to inform them they would have to return to work.

On May 11, 2020, the claimant returned to work. The claimant has been working his regularly scheduled hours since returning. The employer would have scheduled the claimant work if he had not been on leave. The claimant was physically able to perform his duties while he was on leave.

The claimant received the representative's October 23, 2020, decision (reference 01), on November 2, 2020. The claimant remembers frantically calling Iowa Workforce Development after receiving it in the mail because he saw the deadline was going to lapse.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes there is good cause to consider the claimant's appeal as timely and the claimant was voluntarily unemployed due to a leave of absence from April 3, 2020 to May 10, 2020.

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 claimant credibly testified he did not receive the representative's October 23, 2020, decision (reference 01) until the day of its expiration date. The claimant filed his appeal within one day of receipt of the decision. The administrative law judge concludes that claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to either 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). As a result, the administrative law judge has 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).

The next issue to examine is whether the claimant was able and available for the weeks he claimed unemployment from April 3, 2020 to May 10, 2020.

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(1)a provides:

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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

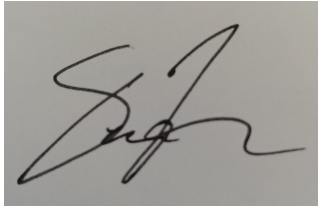
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

When employees request and are granted a leave of absence, they are also considered to be voluntarily unemployed. The claimant is disqualified from benefits from April 3, 2020 to May 12, 2020 due to him being on a leave of absence. Benefits are denied.

**DECISION:**

The representative's October 23, 2020, decision (reference 01) is affirmed. There is good cause to treat claimant's appeal as timely. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 3, 2020 to May 10, 2020. Benefits are denied.



---

Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

January 28, 2021  
Decision Dated and Mailed

smn/kmj

**Note to Claimant:** This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.