

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MELISSA G GARCIA**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 21A-UI-25641-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

Iowa Code §96.6(2) – Timely Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Melissa G Garcia, the claimant/appellant, filed an appeal from the February 2, 2021, (reference 01) unemployment insurance (UI) decision that denied REGULAR UI benefits as of December 23, 2020 because she was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2022. Ms. Garcia participated and testified. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Garcia's appeal filed on time?  
Is Ms. Garcia able to and available for work?  
Is Ms. Garcia temporarily or partially unemployed?  
If so, is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Garcia at the correct address on February 2, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 12, 2021.

Ms. Garcia did not receive the decision in the mail. Ms. Garcia had moved in April 2020 and had updated her address with the United States Postal Service. She was not aware of any issues receiving her mail. Ms. Garcia testified that if she had received the decision denying her benefits, she would have called the number on the decision to learn more, and she would have appealed.

IWD issued one additional decision, dated November 15, 2021, finding Ms. Garcia was overpaid REGULAR UI benefits. Ms. Garcia received that decision in the mail. Ms. Garcia filed an appeal online on November 19, 2021. The appeal was received by Iowa Workforce

Development on November 19, 2021. IWD set up appeals for the overpayment decision and the reference 01 decision.

The administrative law judge further finds: Ms. Garcia started working for the employer in August 2007. She works as a full-time safety training specialist.

In December 2020, Ms. Garcia's boyfriend, who is a member of her household and who also works for the employer, experienced COVID-19 symptoms. Ms. Garcia's boyfriend called the employer's COVID-19 line and reported his symptoms. The employer told Ms. Garcia's boyfriend to self-quarantine for 14 days. The next day, Ms. Garcia attended work. Ms. Garcia's supervisor told her that she needed to call the employer's COVID-19 line to report that she was in close contact with a person experiencing COVID-19 symptoms. Ms. Garcia did so and the employer directed her to not attend work until her boyfriend had received his COVID-19 test result. Ms. Garcia self-quarantined. Ms. Garcia's boyfriend tested negative for COVID-19. Ms. Garcia reported this information to the employer and the employer told Ms. Garcia that she needed to continue to self-quarantine until she had done so for 14 days. Ms. Garcia did not attend work from December 13, 2020 through December 26, 2020. Ms. Garcia returned to work on December 28, 2020..

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

For the reasons that follow, the administrative law judge concludes Ms. Garcia's appeal of the reference 01 decision 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).

Ms. Garcia did not receive the reference 01 decision 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 Ms. Garcia received the overpayment decision (reference 02) she appealed before the appeal deadline. Ms. Garcia is deemed to have appealed the reference 01 decision on time.

The administrative law judge further concludes: Ms. Garcia was able to work from December 13, 2020 through December 26, 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. 871-24.23(1) and (10) provide:

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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is

be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Ms. Garcia has established that she was able to and available for work from December 13, 2020 through December 26, 2020, but she did not work because the employer would not allow her to return work. Ms. Garcia was not sick. Since Ms. Garcia was able to and available for work from December 13, 2020 through December 26, 2020, regular, state-funded unemployment insurance benefits are allowed for these weeks.

**DECISION:**

Ms. Garcia's appeal of the reference 01 decision was filed on time. The February 2, 2021 (reference 01) decision is reversed. Ms. Garcia was able to and available for work from December 13, 2020 through December 26, 2020. Benefits are allowed during these weeks, provided she is otherwise eligible



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

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February 9, 2022  
Decision Dated and Mailed

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