

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ESHRAGA N MOHAMED
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 21A-UI-12416-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On May 16, 2021, the claimant filed an appeal from the August 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Wednesday, July 28, 2021, and was consolidated with the hearing for appeal 21A-UI-12417-LJ-T. The claimant, Eshraga N. Mohamed, participated with the assistance of an Arabic/English interpreter. The employer, Remedy Intelligent Staffing, Inc., participated through Vicky Mathias, Senior Staffing Consultant. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production line worker, from November 13, 2018, until March 31, 2020, when she separated from employment. Claimant's separation has not yet been the subject of a fact-finding interview, and Iowa Workforce Development has not yet issued a decision regarding claimant's separation from employment.

Claimant spoke with Adam at the employer on March 31 and requested some time off because of fear of the pandemic. Adam granted this request. The employer had no further contact from the claimant. Claimant is still at home quarantining, both because of general concerns about the pandemic and because she is pregnant.

The unemployment insurance decision was mailed to the claimant's address of record on August 28, 2020. The claimant did not receive the decision. Claimant noticed that her benefits stopped around this time, so she contacted the agency and was instructed to apply for Pandemic Unemployment Assistance. No one informed her about the decision denying her benefits or her ability to appeal that decision. Claimant then received the unemployment insurance decision dated May 10, 2021 (reference 02) finding she was overpaid benefits. She appealed that decision within ten days of receipt.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence and was not available for work. Benefits are withheld.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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). 00194 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).

Here, claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Additionally, when claimant reached out to the agency to inquire about why her benefits stopped, she was not told about the decision denying her benefits or her ability to appeal that decision. The claimant timely appealed the overpayment decision, which was the first true notice of disqualification and her ability to appeal. Therefore, the appeal shall be accepted as timely.

The second issue is whether claimant is able to and available for work. The administrative law judge determines she is not.

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(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.

Here, claimant requested and was granted a leave of absence because she was fearful of the emerging COVID-19 pandemic. Claimant had compelling personal reasons for asking for a leave of absence from work. However, the employer had work available, and claimant voluntarily chose to decline working for a period in order to quarantine. The administrative law judge finds claimant was on a voluntary leave of absence and is ineligible for benefits.

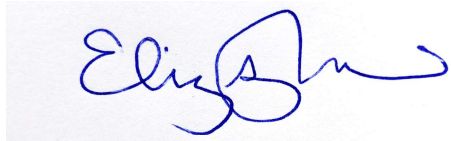
The issue of whether claimant's separation from the employer is disqualifying will be remanded to the Benefits Bureau.

DECISION:

The August 28, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was on a voluntary leave of absence and was ineligible for benefits. Benefits must be withheld.

REMAND:

The issue of whether claimant's separation from Remedy Intelligent Staffing, Inc. is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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August 3, 2021
Decision Dated and Mailed

lj/kmj