

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**CHRISTINE J CANTU**  
Claimant

**DENTAL CENTER OF NORTH IOWA, L.C.**  
Employer

**APPEAL 21A-UI-24760-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/15/20**  
**Claimant: Appellant (5R)**

---

Iowa Code § 96.4(3) - Eligibility  
Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

On November 3, 2021, Christine Cantu (claimant/appellant) filed an appeal from the decision dated January 28, 2021 (reference 03) that denied unemployment insurance benefits as of November 15, 2020 based on a finding that claimant requested and was granted a leave of absence.

A telephone hearing was held on January 6, 2022. The parties were properly notified of the hearing. Claimant participated personally. Dental Center of North Iowa, L. C. (employer/respondent) Office Manager Emily Adams.

Claimant's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Is claimant able to and available for work

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on April 22, 2020. Claimant was hired as a dental assistant. Employer held claimant out of work in the weeks ending November 21 and 28, 2020, due to claimant testing positive for Covid-19. Claimant was not able and available for work during those two weeks due to illness. She returned to work on November 30, 2020 and remains employed by employer to date.

Claimant filed a claim for benefits in the weeks ending November 21 and 28, 2020. She received four hours of PTO in the gross amount of \$80.00 in the week ending November 21, 2020, which she reported when filing her weekly claim for benefits. She received holiday pay and PTO in the

gross amount of \$260.00 in that week. Claimant reported receiving \$173.50 when she filed her weekly claim in that week.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 29, 2021. That was claimant's correct address at that time. Claimant did receive the decision. The delay in appealing was due to Department misinformation. Specifically, claimant called in upon receiving the decision and was advised by a representative to simply file for Pandemic Unemployment Assistance and wait. Claimant was prompted to appeal when she received an overpayment decision many months later. She promptly appealed at that time.

Claimant was allowed federal Pandemic Unemployment Assistance effective November 8, 2020 in the amount of \$367.00 per week in a decision issued November 18, 2021. Claimant has not received PUA payments to date.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated January 28, 2021 (reference 03) that denied unemployment insurance benefits as of November 15, 2020 based on a finding that claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant is ineligible for unemployment insurance benefits in the weeks filed.

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."

The record in this case shows the delay in appealing was due to Department misinformation. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal promptly after learning of the overpayment decision. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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.

The administrative law judge finds claimant did not request a leave of absence but was nonetheless ineligible for unemployment insurance benefits in the weeks filed due to being unable to work during that period due to illness. Unemployment insurance benefits must therefore be denied.

However, claimant was allowed federal Pandemic Unemployment Assistance effective November 8, 2020 in the amount of \$367.00 per week in a decision issued November 18, 2021. Claimant

has not received PUA payments to date. This matter is therefore remanded to the Department for issuance of PUA payments due to claimant.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated January 28, 2021 (reference 03) that denied unemployment insurance benefits as of November 15, 2020 based on a finding that claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant is ineligible for unemployment insurance benefits in the weeks filed.

**REMAND:**

The matter is REMANDED to the Department for issuance of PUA payments due to claimant.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

January 27, 2022  
Decision Dated and Mailed

abd/abd