

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN P GENOVESE
Claimant

GLOBAL SOURCE DISTRIBUTION LLC
Employer

APPEAL 21A-UI-05881-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (4)

Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On February 22, 2021, Stephen Genovese (claimant/appellant) filed an appeal from the July 27, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on April 30, 2021. The parties were properly notified of the hearing. Claimant participated personally. Global Source Distribution, LLC (employer/respondent) did not register a number for the hearing and did not participate.

Claimant's exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?
- III. Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

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

Employer notified claimant on April 2, 2020 that he may have come into contact with a person who tested positive for COVID-19. Employer gave claimant the option to continue working or to take two weeks off to quarantine and file for unemployment benefits. Claimant chose to take off

two weeks to quarantine and to file for benefits. Claimant was therefore out of work for part of the week ending April 4, 2020 and the entire week ending April 11, 2020.

Claimant returned to work on or about April 13, 2020 and learned at that time that employer had paid him his normal wages during the weeks he filed for benefits. Claimant did not know employer was going to pay him as usual during the time off until after he had filed for benefits.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 27, 2020. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 6, 2020. Claimant did not receive that decision in the mail and was unaware that he had been denied benefits until he received an overpayment decision dated February 12, 2021. Claimant appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 27, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. Claimant's leave of absence was only during the weeks ending April 4 and 11, 2020, and so he is only ineligible due to being unavailable for work during those two weeks.

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 that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed his appeal shortly after learning of the decision denying benefits. Claimant's appeal is therefore timely.

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:

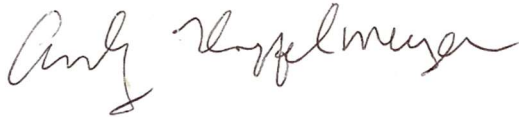
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Employer gave claimant the option to continue working or to take two weeks off to quarantine and file for unemployment benefits. Claimant chose to take off two weeks to quarantine and to file for benefits. Claimant was therefore out of work for part of the week ending April 4, 2020 and the entire week ending April 11, 2020. Because there was work available for claimant in those two weeks but he chose to make himself unavailable for work, he is ineligible for benefits in those two weeks.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 27, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. Claimant's leave of absence was only during the weeks ending April 4 and 11, 2020, and so he is only ineligible due to being unavailable for work during those two weeks.



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

May 12, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.