

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANGA B MAGAR
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-24012-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/24/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On October 28, 2021, the claimant/appellant filed an appeal from the December 23, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant requesting and granted a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2021. The hearing was held together with appeal 21A-UI-24013-CS-T and combined into one record. Claimant participated at the hearing through CTS Language Link Nepali Interpreter Naia (Identification Number 9610). Present as claimant's witnesses were Chandra Magar and Usanta Magar. Employer did not call in to participate during the hearing. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is claimant's appeal timely?

Is the claimant able to 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: The unemployment insurance decision was mailed to the appellant's address of record on December 23, 2020. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated October 21, 2021. The appeal was sent within ten days of receipt of that decision.

The claimant is employed as a full-time assembler for the employer. The employer has a policy that requires employees to go on a mandatory leave or absence to quarantine if they or a member

of their household tests positive for COVID. The employer requires their employees to quarantine for three weeks.

On September 18, 2020, Claimant's daughter tested positive for COVID. Claimant notified employer of his exposure to COVID. Employer required claimant to stay home and quarantine. Claimant did not test positive for COVID and he did not show any symptoms of COVID. Claimant would have worked if he was not required to quarantine.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant 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). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was on a voluntary leave of absence. For the reasons that follow, the administrative law judge concludes claimant was able to and available for work and was not on a voluntarily leave of absence. Benefits are allowed effective September 20, 2020.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code 871. 24.22(2) provides:

Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

j. Leave of absence. A leave of ***absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual***, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(Emphasis added).

Iowa Admin. Code r. 871-24.23(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

Claimant did not request a leave of absence during these weeks; he would have preferred to continue working. However, due to the pandemic and the risk of exposing coworkers to COVID-19, the employer required claimant to remain away from work. Because it was the employer's choice that claimant was removed from work and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The claimant's appeal is timely.

The December 23, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant was able to and available for work effective September 20, 2020. Benefits are allowed, provided he is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 24, 2022
Decision Dated and Mailed

cs/scn