

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA L BRETEY
Claimant

PINNACLE HEALTH FACILITIES XVII LLC
Employer

APPEAL 21A-UI-22642-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (4)

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) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On October 11, 2021, the claimant filed an appeal from the November 18, 2020, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was on an approved leave of absence. A telephone hearing was held on December 6, 2021, pursuant to due notice, and was consolidated with the hearing for appeals 21A-UI-22644-S2-T and 21A-UI-22645-S2-T. Claimant Maria L. Bretey participated. Employer Pinnacle Health Facilities XVII, LLC did not call into the toll-free telephone number at the time of the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal timely?
Was claimant able to and available for work from August 30, 2020, through September 19, 2020?
Is claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 24, 2020. Claimant works for employer as a full-time registered nurse.

On September 2, 2020, claimant notified her employer that her son tested positive for COVID-19. Employer required claimant to quarantine until September 17, 2020, even though she was not sick and had not tested positive. Claimant wanted to work during this time, and she returned to work on September 17, 2020, following the quarantine.

A disqualification decision was mailed to claimant's last known address of record on November 18, 2020. She did receive the decision within ten days. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an

appeal must be postmarked or received by the Appeals Bureau by November 28, 2020. The appeal was not filed until October 11, 2021, which is after the date noticed on the disqualification decision. When claimant received the decision, she immediately called Iowa Workforce Development (IWD) to discuss the decision. A representative told claimant she had filed under the wrong program and described how she needed to correct the error. Claimant believed that she did not need to file an appeal since the representative indicated all she needed to do was go online and correct a mistake. Claimant filed an appeal of two overpayment decisions dated October 1, 2021, and the appeal was applied to the underlying decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes it is timely.

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, subsection 10, 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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did not have a reasonable opportunity to file a timely appeal. Here, claimant's failure to file a timely appeal was due to misinformation received from an IWD representative. As such, it shall be treated as timely.

The next issue is whether claimant was temporarily unemployed and considered able to and available for work. For the reasons that follow, the administrative law judge concludes that claimant was temporarily unemployed and considered able to work and available for work from August 30, 2020, through September 19, 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(10) provides:

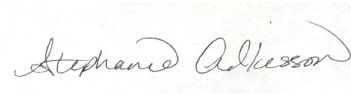
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

An individual claiming benefits has the burden to prove that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant's unrefuted testimony is that she was not ill or under the care of a doctor and she did not request a leave of absence. Therefore, claimant was temporarily unemployed for fewer than four weeks because the employer laid her off due to a public emergency. Claimant is considered able to and available for work during this time. Accordingly, benefits are allowed from August 30, 2020, and September 19, 2020.

DECISION:

The appeal is timely. The November 18, 2020, (reference 02) unemployment insurance decision is modified in favor of the claimant. Claimant is able to work and available for work from August 30, 2020, through September 19, 2020. Benefits are allowed, provided she is otherwise eligible.

A handwritten signature in cursive script, reading "Stephanie Adkisson", is written over a light yellow rectangular background.

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

January 6, 2022
Decision Dated and Mailed

sa/kmj