

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANTEL M GROSECLOSE
Claimant

APPEAL NO. 21A-UI-23878-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAL L CARDELLA & ASSOCIATES INC
Employer

OC: 11/08/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Shantel Groseclose, filed a late appeal from the January 19, 2021, reference 01, decision that denied benefits during the two-week period of November 8-21, 2020, based on the deputy's conclusion that the claimant was unable to work due to illness and not available for work. After due notice was issued, a hearing was held on December 17, 2021. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-23879-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, the reference 01 and 02 decisions, and the fact-finding materials.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.
Whether the claimant was able to work and available for work during the two-week period of November 8-21, 2020.

FINDINGS OF FACT:

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

The claimant, Shantel Groseclose, established an original claim for benefits that was effective November 8, 2020. Iowa Workforce Development set the weekly benefit amount at \$302.00. The claimant made weekly claims for the weeks ending November 14 and 21, 2020 and received \$604.00 in regular state benefits for the two-week period.

The claimant has at all relevant times been employed by Thomas L. Cardella & Associates, Inc. as a full-time customer service representative (telemarketer). The claimant performs her work at a call center.

On Thursday, November 5, 2020, the claimant was feeling ill with symptoms consistent with COVID-19. On Friday, November 6, 2020, the claimant called in sick. On Monday,

November 9, 2020, the claimant sought COVID-19 testing at a drive-up test site. The claimant's husband was also experiencing symptoms consistent with COVID-19. The provider advised the claimant to quarantine until she got test results. The claimant received her test result on Wednesday, November 11, 2020 and learned at that time she was positive for COVID-19. The claimant determined that she needed to quarantine for two weeks/14 days pursuant to Centers For Disease Control (CDC) guidelines. The claimant had let the employer know of her illness and her need to be off work to recover. But, for the claimant's illness, the employer had the claimant's regular full-time work available to the claimant. The claimant's illness progressed to where the claimant was unable smell or taste and unable to keep food down. The claimant subsequently contacted her doctor's office for clarity for when she could return to work. The claimant returned to work on Monday, November 23, 2020.

On January 14, 2021, the claimant participated in a fact-finding interview that addressed her ability to work and her availability for work during the November 2020 two-week period in question.

On January 19, 2021, Iowa Workforce Development Benefits Bureau mailed the reference 01 decision to the claimant's address of record. The address of record is a lot located in a mobile home park. The claimant also has a Post Office Box, but does not have the Postal Service automatically route mail from the street address to the P.O. Box. The reference 01 decision denied benefits during the two-week period of November 8-21, 2020, based on the deputy's conclusion that the claimant was unable to work due to illness and not available for work. The decision stated that the decision would become final unless an appeal was postmarked by January 29, 2021 or was received by the Appeals Section by that date. The claimant did not receive the January 19, 2021, reference 01, decision when it was mailed to her, did not know about the appeal deadline, and did not file an appeal by the January 29, 2021 deadline.

The claimant did not give the unemployment insurance matter more thought until she received the October 22, 2021, reference 02, decision that held she was overpaid paid regular benefits for the two weeks in November 2020. On October 27, 2021, the claimant completed and transmitted an online appeal. The claimant attached a copy of her COVID-19 test result to the appeal.

REASONING AND CONCLUSIONS OF LAW:

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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

There is good cause to treat the late appeal from the January 19, 2021, reference 01, decision as a timely appeal. The claimant did not receive the decision that was mailed to her on January 19, 2021, did not have a reasonable opportunity to file an appeal by the January 29, 2021 deadline, and was unaware of the decision until she received the overpayment decision mailed on October 22, 2021. The claimant filed an appeal on October 27, 2021 and did not unreasonably delay filing the appeal. The weight of the evidence indicates the United States Postal Service caused the appeal from the reference 01 decision to be late, which provides good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to enter a decision on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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. 871-24.22(1)(a) and (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...
(2) 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.

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.

The evidence in the record establishes that the claimant was not able to work and was not available for work during the two weeks between November 8, 2020 and November 21, 2020.

During that time, the claimant was ill with COVID-19 and unable to perform work. The claimant is not eligible for regular state benefits for those two weeks.

DECISION:

The claimant's appeal from the January 19, 2021, reference 01, decision was timely. The decision is affirmed. The claimant did not meet the able and available requirements during the two weeks between November 8, 2020 and November 21, 2020. The claimant is not eligible for regular state benefits for those two weeks.



James E. Timberland
Administrative Law Judge

January 21, 2022
Decision Dated and Mailed

jet/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.