

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLIE B DRUMMONDO
Claimant

CARE INITIATIVES
Employer

APPEAL 22A-UI-06903-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On March 18, 2022, Kellie Drummondo (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 22, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant requested and was granted a leave of absence.

A telephone hearing was held on May 3, 2022. The parties were properly notified of the hearing. Claimant participated personally. Care Initiatives (employer/respondent) participated by Administrator Chyann Vrough and was represented by Hearing Rep. Thomas Kiper.

Appeal Nos. 22A-UI-06903-AD-T, 22A-UI-06904-AD-T, and 22A-UI-06906-AD-T are related and were heard concurrently. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant began working for employer in 2013. She is still employed there as a part-time hospice aide. Employer held claimant out of work from February 7 until February 16, 2021 as a precaution and in accordance with CDC guidelines because her husband tested positive for COVID-19. Claimant was not personally ill during this time and was ready, willing, and able to work. She did not request a leave of absence. Claimant filed a claim for benefits in that week. She did not file any claims after that.

The Unemployment Insurance Decision was mailed to claimant at the above address on April 22, 2021. 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 May 2, 2021. Claimant did not receive the decision and was unaware she was denied benefits until she received overpayment decisions in March 2022. She 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 decision dated April 22, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant requested and was granted a leave of absence is REVERSED.

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 and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. 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:

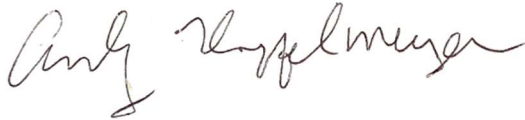
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Employer held claimant out of work from February 7 until February 16, 2021 as a precaution and in accordance with CDC guidelines because her husband tested positive for COVID-19. Claimant was not personally ill during this time and was ready, willing, and able to work. She did not request a leave of absence. Claimant therefore meets the eligibility requirements for the week in question and benefits are allowed, provided she is not otherwise disqualified or ineligible.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated April 22, 2021 (reference 01) that denied unemployment insurance benefits as of February 7, 2021 based on a finding that claimant requested and was granted a leave of absence is REVERSED. Claimant meets the eligibility requirements for the week in question and benefits are allowed, provided she is not otherwise disqualified or ineligible.



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

May 4, 2022

Decision Dated and Mailed

abd/abd