

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BIENVENUE M TSHIABOLA**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 21A-UI-19795-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/30/19**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Bienvenue M. Tshiabola, the claimant/appellant, filed an appeal from the October 21, 2020, (reference 03) unemployment insurance (UI) decision that denied REGULAR UI benefits as of April 19, 2020 because Ms. Tshiabola was on a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on November 3, 2021. Ms. Tshiabola participated and testified. The employer participated thought Colin Evers, human resources specialist. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Tshiabola's appeal filed on time?  
Is Ms. Tshiabola able to and available for work?  
Is Ms. Tshiabola on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Tshiabola at the correct address on October 21, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 31, 2020. . If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. October 31, 2020 was a Saturday; therefore, the deadline was extended to Monday, November 2, 2020.

Ms. Tshiabola did not receive the decision in the mail. IWD issued two additional decisions finding Ms. Tshiabola was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Tshiabola received at least one of the decisions. Ms. Tshiabola filed an appeal via fax on September 7, 2021. The appeal was received by Iowa Workforce Development on September 7, 2021.

Ms. Tshiabola began working for the employer on August 21, 2018. She works as a full-time assembler.

In April 2020, Ms. Tshiabola's husband tested positive for COVID-19. The employer's policy required employees who were exposed to others who tested positive for COVID-19 to self-quarantine. Based on the employer's policy and her doctor's advice, Ms. Tshiabola self-quarantined from April 20, 2020 through May 4, 2020. Ms. Tshiabola returned to work on May 5, 2020.

Ms. Tshiabola was not feeling well. The employer had told employees to call in if they did not feel well. Ms. Tshiabola did so and stayed home from work from May 26, 2020 through June 15, 2020. Ms. Tshiabola returned to work on June 16, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Tshiabola's appeal was filed on time.

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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).

Ms. Tshiabola did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Tshiabola filed an appeal when she learned that she had been overpaid. Ms. Tshiabola's appeal was filed on time.

The administrative law judge further concludes as follows:

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(1) and (10) provide:

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.

(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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Ms. Tshiabola has established that she was able to and available for work from April 20, 2020 through May 4, 2020 but she did not work because the employer's policy required her to self-quarantine. Ms. Tshiabola was not sick. Since Ms. Tshiabola was able to and available for

work from April 20, 2020 through May 4, 2020 regular, state-funded unemployment insurance benefits are allowed during this time period.

From May 26, 2020 through June 15, 2020, Ms. Tshiabola was ill and not able to work. Since Ms. Tshiabola was not able to work during this time, benefits are denied from May 26, 2020 through June 15, 2020.

Even though Ms. Tshiabola is not eligible for regular unemployment insurance benefits under state law from May 26, 2020 through June 15, 2020, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

**DECISION:**

Ms. Tshiabola's appeal was filed on time. The October 21, 2020, (reference 03) decision is modified in favor of the appellant, Ms. Tshiabola. Ms. Tshiabola is able to and available for work from April 20, 2020 through May 4, 2020. Benefits are allowed during this time period, provided Ms. Tshiabola is otherwise eligible. Ms. Tshiabola is not able to work from May 26, 2020 through June 15, 2020. Benefits are denied during this time period. Benefits are allowed as of June 16, 2020, provided Ms. Tshiabola is otherwise eligible.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

December 6, 2021  
Decision Dated and Mailed

dz/scn

**NOTE TO MS TSHIABOLA:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law from May 26, 2020 through June 15, 2020. 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.
- If you were unemployed from May 26, 2020 through June 15, 2020 for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on June 30, 2019.