

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORTNEY M STEWART
Claimant

MENARD INC
Employer

APPEAL 21A-UI-14273-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On June 17, 2021, claimant Cortney M. Stewart filed an appeal from the September 22, 2020 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant was still employed at the same hours and wages as contemplated in her contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 4:00 p.m. on Thursday, August 26, 2021. Appeal numbers 21A-UI-14273-LJ-T and 21A-UI-14274-LJ-T were heard together and created one record. The claimant, Cortney M. Stewart, participated. The employer, Menard, Inc., participated through Lance Gesell, Plant Manager. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on September 22, 2020. She is not sure whether she received the decision, as she received "so many things." 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 October 2, 2020. The appeal was not filed until June 17, 2021, which is after the date noticed on the disqualification decision.

Claimant made contact with the agency sometime after she stopped receiving benefits. She was informed that she had reached her maximum benefit amount, so her benefits had stopped. This was incorrect information; claimant still had \$7,358.70 in benefits available for her benefit year.

Claimant began full-time employment with employer Menard, Inc., on May 22, 2019. Claimant was employed as a laborer with this employer. Claimant went on maternity leave on June 30, 2020. Work was available for her, had she not taken maternity leave. She was approved to be absent from work through September 22, 2020. However, claimant returned on August 25, 2020, and immediately resumed her full-time work schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work. Benefits are withheld.

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 § 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). 00194 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).

Here, it is not clear that claimant received the unemployment insurance decision at issue. Additionally, it is possible that the incorrect information claimant received regarding reaching her maximum benefit amount may have adversely affected her and impeded her ability to appeal. Therefore, it is presumed that the appeal was timely filed.

The next issue is whether claimant was able to work and available for work during the period in question. 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 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) & (2) provide:

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.

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 provides in relevant part:

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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In order to be eligible for benefits, an individual must be able to work and available for work. Here, the evidence in the record indicates that claimant was not able to work and available for work from the effective date of her claim – July 12, 2020 – through the week ending August 22, 2020, because she was on maternity leave. Claimant chose to remove herself from the labor market during those weeks, and therefore benefits must be withheld.

Effective August 23, 2020, claimant had returned to working in her full-time job. Claimant worked four days during her first week back, which is certainly enough to remove her from the labor market. Thereafter, claimant worked her standard five-days work weeks. For that reason, effective August 23, 2020, benefits must be withheld.

DECISION:

The September 22, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant was not able to work and available for work effective July 12, 2020. Benefits are withheld.



Elizabeth A. Johnson
Administrative Law Judge

September 01, 2021
Decision Dated and Mailed

lj/ol