

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEONO SMITH
Claimant

CONSUMER SAFETY TECHNOLOGY LLC
Employer

APPEAL 21A-UI-14646-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (1R)**

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 27, 2021, the claimant filed an appeal from the June 15, 2021, (reference 03) unemployment insurance decision that based upon a finding that claimant was not available for work. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2021, and was consolidated with the hearing for appeal 21A-UI-14645-S2-T. Claimant Teono Smith participated personally. Employer did not register for the hearing and did not participate. Department's Exhibit D-1 was received.

ISSUES:

Is the claimant's appeal is timely?
Is the claimant able to and available for work effective May 9, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 26, 2021. Claimant worked for employer as a full-time customer service representative until June 14, 2021, when he was separated from his employment.

Claimant's hours were reduced following the pandemic. In December 2020, claimant's wife delivered their child. Claimant did not request to work additional hours after his daughter was born because he helped to care for his daughter. When claimant's wife returned to work at the beginning of April, claimant was unable to work additional hours because he stayed home with his daughter, as he did not have other childcare.

The issues of claimant's separation from employment and whether claimant is able to and available for work after the separation have not yet been addressed by the Benefits Bureau.

A disqualification decision was mailed to claimant's last known address of record on June 15, 2021. 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 June 25, 2021. The appeal was not filed until June 27, 2021, which is after the date noticed on the disqualification decision. Claimant lives in a duplex and his mail gets delivered to the incorrect side on occasion. On June 26, 2021, when claimant discovered the decision was delivered to the wrong address, he promptly filed this appeal.

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.

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. The decision was delivered to the wrong mailbox. Claimant did not receive the decision until after the deadline to file an appeal had passed; however, he filed the appeal the day after receiving the decision. The appeal shall be treated as timely.

The next issue is whether claimant is able to and available for work effective May 9, 2021. For the reasons that follow, the administrative law judge concludes that the claimant is not.

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 provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

An individual claiming benefits has the burden of proof that he is able to work. For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Here, claimant was not available to work his full time hours due to a lack of childcare while his wife was working. Claimant was not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits effective May 9, 2021.

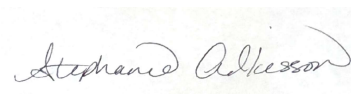
The issues of claimant's permanent separation from employment and whether claimant is able to and available for work after the separation shall be remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The appeal is timely. The June 15, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant is not available for work effective May 9, 2021, and regular, state-funded unemployment insurance benefits are denied.

REMAND:

The issues of separation from employment and whether claimant is able to and available for work after the separation are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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

August 20, 2021
Decision Dated and Mailed

sa/kmj