

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EARL D LONG
Claimant

SCHUSTER CO
Employer

APPEAL 21A-UI-17063-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On August 3, 2021, claimant Earl D. Long filed an appeal from the August 26, 2020 (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant was on a leave of absence and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. and continued until 3:00 p.m. on Wednesday, September 29, 2021. Appeal numbers 21A-UI-17063-LJ-T, 21A-UI-17065-LJ-T, and 21A-UI-17066-LJ-T were heard together and created one record. The claimant, Earl D. Long, participated. Claimant's wife, Patsy Long, participated as both a witness and claimant's representative. The employer, Schuster Company, participated through Krystin Sitzmann, Safety Director. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Schuster Company on January 30, 1996. Throughout his employment, claimant worked for the employer as a full-time over-the-road driver. Claimant separated from employment on May 22, 2020. That separation has already been adjudicated by Iowa Workforce Development.

Claimant last reported to work and performed his job on February 17, 2020. He stopped reporting to work after this date because he attended his DOT physical and the physician determined that he needed cataract surgery in both eyes. Claimant went on FMLA-covered leave to have surgery and recover.

Claimant intended to be on leave for ninety days. He had successful surgery on one eye, and he was scheduled to have surgery on the other eye the following week. However, due to the COVID-19 pandemic, all non-emergency surgeries were cancelled and therefore claimant was unable to have surgery on his second eye. Claimant remained on FMLA-covered leave through his end date of employment.

The unemployment insurance decision that denied benefits was mailed to the claimant's address of record on August 26, 2020. The claimant did not receive the decision. The first notice of disqualification was the overpayment decisions dated July 27, 2021. The appeal was sent within ten days after receipt of those decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence and was not available for work.

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).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decisions, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

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(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Admin. Code r. 871-24.23(10) provides:

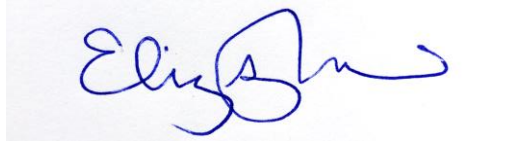
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In this case, claimant opened his claim effective March 22, 2020, while he was on a medical leave of absence from work. He was not able to work in his job as an over-the-road driver at the time, as he was awaiting cataract surgery and had not passed a DOT physical. The administrative law judge finds claimant was on a leave of absence and was not available to work effective March 22, 2020, through his separation date of May 22, 2020. Benefits are withheld.

DECISION:

The August 26, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was on an approved leave of absence and was not available for work effective March 22, 2020, through the week ending May 23, 2020. Benefits are withheld.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 1, 2021
Decision Dated and Mailed

lj/mh