

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAUNNA M PETERSEN HALVORSON
Claimant

HUMBOLDT ST MARYS
Employer

APPEAL 21A-UI-03436-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

On February 25, 2021, the claimant, Shaunna M. Petersen Halvorson, filed an appeal from the February 9, 2021 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was on a leave of absence. The parties were properly notified of the hearing. A telephonic hearing was held on Tuesday, March 30, 2021. The claimant, Shaunna M. Petersen Halvorson, participated. The employer, Humboldt—St. Mary's, participated through witness Cindy Johnson, Business Manager; and hearing representative Paul Jahnke represented the employer.

ISSUES:

Did claimant file a timely appeal?
Was claimant able to and available for work effective November 15, 2020?
Was claimant on an approved leave of absence effective November 15, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a para-educator with employer Humboldt—St. Mary's beginning November 1, 2017. Claimant remains employed with this employer.

On November 18, 2020, claimant learned that her son tested positive for COVID-19. Therefore, pursuant to public health protocol, she and her family began to quarantine on November 19.

During their quarantine, claimant began experiencing symptoms of COVID-19. Around Friday, November 27, claimant started coming down with a headache, coughing, body aches, and a runny nose. These symptoms were not severe. Claimant eventually went to the doctor on December 1 and tested positive for COVID-19. She testified that her symptoms were never so severe that they would have kept her home from work, had there not been a pandemic and a public health mandate.

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 February 9, 2021. She did receive the decision within ten days. 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 February 19, 2021. The appeal was not filed until February 25, 2021, which is after the date noticed on the disqualification decision.

Claimant testified that she was consumed with the reference 01 decision that denied her benefits effective March 22, 2020, and the resulting overpayment of both state and federal benefits. She was not focused on or concerned with the reference 03 decision that denied her benefits for only three weeks, as she had not received benefits for those weeks and there was no associated overpayment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant Shaunna M. Petersen Halvorson failed to file her appeal 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:

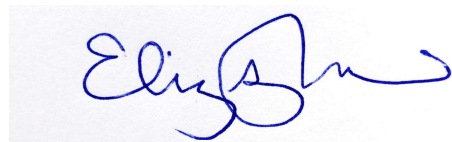
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission 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). 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).

Claimant received the decision in a timely manner. The delay in filing the appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The February 9, 2021 (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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

April 1, 2021
Decision Dated and Mailed

lj/kmj

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. 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.

Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.