

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENDI L KIRCHNER
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL 20A-UI-11523-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/31/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 26, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 17, 2020, at 9:05 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.
Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on August 26, 2020. Claimant received the decision at her address on September 10, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 5, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. September 5, 2020 was a Saturday and Monday, September 7, 2020 was a legal holiday; therefore, the deadline was extended to Tuesday, September 8, 2020. Claimant appealed the decision online on September 17, 2020. The appeal was received by Iowa Workforce Development on September 17, 2020.

Claimant began her employment as a full-time Certified Nursing Assistant with Grapetree Medical Staffing in January 2019. Claimant last performed work for employer on October 26, 2019. Claimant was advised by her physician not to work due to her high-risk pregnancy. Claimant informed employer of her need to be absent from work. Employer consented to claimant's absence. After giving birth on January 12, 2020, claimant notified employer that she

needed six weeks to recover from the delivery, but could then return to work. In March, employer contacted claimant and asked if she was ready to return to work. Claimant replied that she was not ready to return due to continued complications from the delivery. In late May 2020, claimant felt physically able to work but did not contact Grapetree about returning to work. Claimant filed an initial claim for unemployment benefits effective May 31, 2020.

As of May 31, 2020, claimant had voluntarily quit her employment with Grapetree Medical Staffing. (See Appeal Number 20A-UI-11522). Because claimant's employment had ended, she was no longer on a leave of absence. Since May 31, 2020, claimant has not been sick or hospitalized. Claimant has not been out of town for more than one night. Claimant has not been incarcerated or self-employed. Claimant had transportation to and from work and work-related childcare.

Iowa Workforce Development waived the work search requirements due to Covid-19 from the beginning of the pandemic until September 8, 2020. The administrative record reflects that claimant has made no employer contacts since filing her initial claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

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).

Claimant did not receive the decision prior to the appeal deadline; therefore, the notice provisions were not valid. Claimant filed her appeal within a week of receiving the decision in the mail. Claimant's appeal is considered timely.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

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".

Since May 31, 2020, claimant had no barriers to employment that would make her unable to work or unavailable for work. Benefits are allowed provided claimant is otherwise eligible.

The issue of whether claimant was earnestly and actively seeking work since the work search requirement was reinstated should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

Claimant's appeal is timely. The August 26, 2020 (reference 02) unemployment insurance decision is reversed. Claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant has earnestly and actively sought work since the work search requirement was reinstated is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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November 24, 2020
Decision Dated and Mailed

acw/scn