

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CENIA M MORALES**

Claimant

**APPEAL 22A-UI-07842-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**

Employer

**OC: 03/15/20**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant, Cenia M. Morales, filed an appeal from the March 23, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on May 12, 2022. The hearing was held together with Appeals 22A-UI-07843-JC-T and 22A-UI-07844-JC-T. The claimant participated personally. The employer/respondent, Pella Corporation, participated through Lisa Smith, HR Manager. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?

Was the claimant able and available for work March 15-21, 2020 and July 26-August 1, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: Claimant has worked for this employer since 2018. Claimant established her claim for unemployment insurance benefits with an effective date of March 15, 2020.

For the week of March 15-21, 2020, claimant did not perform work, but was paid her full-time wages as though she worked. Employer placed claimant on a leave of absence in response to her recent international travel, based on CDC guidelines regarding COVID-19. Claimant returned to work on March 24, 2020.

For the week of July 26, 2020 through August 1, 2020, claimant was on a second leave of absence, because she was sick with COVID-19 symptoms. She did not perform work and was not paid for this leave of absence. She then took vacation August 3-9, 2020 and returned to work on August 10, 2020.

An initial decision (reference 01) was mailed to the claimant/appellant's address of record on March 23, 2021. The decision contained a warning that an appeal must be filed by April 2, 2021. The decision also directed the appellant to call the customer service line for assistance. Appellant did not appeal the decision within the appeal period. Appellant filed the appeal on April 1, 2022 (See Department Exhibit 1). Claimant filed her appeal after receiving overpayment decisions dated March 25, 2022. The overpayment decisions were claimant's first notice of the disqualification.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 claimant did not have an opportunity to appeal the initial 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 decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was not eligible for unemployment insurance benefits for the weeks ending March 21, 2020 and August 1, 2020.

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 96.1A, subsection 38, paragraph "b", subparagraph (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(23) provides:

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

(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.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

For a totally unemployed individual to be eligible to receive benefits, she 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 she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the week of March 15-21, 2020: Claimant in this case did not perform any work while employer had claimant self-quarantine after international travel. However, because employer paid claimant for the whole week, as though she did work, she would not be considered unemployed, and therefore is not eligible to receive unemployment insurance benefits for this week. See Iowa Admin. Code r. 871-24.23(23).

For the week of July 26, 2020-August 1, 2020: Claimant was sick with COVID-19 symptoms and unable to perform work. She therefore was not able to work and denied regular unemployment insurance benefits. See Iowa Admin. Code r. 871-24.23(1).

**DECISION:**

The March 23, 2021 (Reference 01) initial decision is affirmed. The appeal is timely. The claimant was not able and available for work for the weeks ending March 21, 2020 and August 1, 2020. Regular benefits are denied.



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May 20, 2022  
Decision Dated and Mailed

jlb/scn