

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILY M LEWANDOWSKI**  
Claimant

**APPEAL 20A-UI-09268-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAYOR'S YOUTH EMPOWERMENT  
PROGRAM**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able to and Available 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:**

The claimant/appellant, Emily M. Lewandowski, filed an appeal from the July 22, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A first telephone hearing was scheduled for September 21, 2020 but postponed to allow claimant to attend a school exam at the same time.

After proper notice, a telephone hearing was held on September 21, 2020. The claimant participated personally. The employer, Mayor’s Youth Empowerment Program, participated through Kari Wilken, chief operating officer.

The administrative law judge took official notice of the administrative records. Department Exhibit D-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?

Is the claimant able to work and available for work effective March 29, 2020?

Is the claimant voluntarily unemployed due to a requested leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer provides support to individuals with developmental disabilities through its day rehabilitation (“day-hab”) program and residential program.

Claimant began work for employer as a part-time direct-support professional in May 2019, working in the “day-hab” division. Claimant’s hours varied each week, but employer reported

claimant worked generally 5-10 hours per week. Claimant's availability was limited due to her enrollment in college. She attends the University of Iowa.

On March 13, 2020, employer closed its day-hab facility due to the COVID-19 pandemic. The facility remains closed as of the date of hearing. Employer continued providing support through its residential program, which is substantially similar to the day-hab position, but involves employees visiting the homes of clients, rather than clients being centrally located at the employer's premises. Employees, including claimant, were offered employment through the residential program while the day-hab facility was closed. Employer twice contacted claimant for availability and was told claimant was unavailable to perform work. After the denial of unemployment insurance benefits, claimant did resume work with the employer, through its residential program. Due to claimant's restricted availability, which are small windows of time, employer has been unable to offer claimant many shifts, because most of its shifts are longer in duration.

Claimant is currently employed also part-time at Scheels and in school full-time.

An initial unemployment insurance decision (Reference 01) resulting in a denial of benefits was mailed to claimant's last known address of record on July 22, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 1, 2020. Because August 1, 2020 was a Saturday, the final day to appeal was extended to Monday, August 3, 2020.

Claimant received the decision within the appeal period. Claimant contacted IWD on Saturday, August 1, 2020 for guidance and stating she wanted to appeal, and also contacted her employer on August 3, 2020. Claimant met with her employer on August 3, 2020 and heard back from IWD on Monday, August 3, 2020 regarding her request to appeal. Claimant filed her appeal using the online form on August 4, 2020 (Department Exhibit D-1).

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

### **The first to address is whether the claimant's appeal is considered timely.**

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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).

Claimant in this case made contact with IWD for guidance on August 1, 2020, which was within the prescribed period to appeal the decision. Because August 1, 2020 was a Saturday, claimant did not receive a response until Monday, August 3, 2020, the due date. Claimant filed her appeal the next day, and based upon the evidence presented, the administrative law judge concludes the appeal shall be accepted as timely filed.

**For the reasons that follow, the administrative law judge concludes the claimant is ineligible for regular, state-funded unemployment insurance benefits effective March 29, 2020.**

The undisputed evidence is the claimant did not request a leave of absence, nor was she put on one by the employer. Therefore, that issue is moot at this time. The next issue to address is whether the claimant is able to and available for work effective March 29, 2020.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

For an 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.

Iowa Admin. Code r. 871-24.23 provides in pertinent part:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

...

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The administrative law judge recognizes the claimant has filed her current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. While it may have been in a residential instead of facility setting, it was substantially similar. Claimant was qualified to accept shifts in that role and ultimately did, after being denied unemployment insurance benefits. However, during the period that claimant filed weekly continued claims for unemployment insurance benefits, the claimant informed the employer she was unable to work. This was in part due to her schooling and for personal reasons. Based on the evidence presented, the claimant limited her availability for work to a degree that she could not have reasonably expected to obtain shifts/employment. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

*Note to Claimant:* This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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>.

#### **DECISION:**

The July 22, 2020 (reference 01) initial decision is affirmed. The appeal is timely. The claimant is not able and available for work effective March 29, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.



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Jennifer L. Beckman  
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October 26, 2020

Decision Dated and Mailed

jlb/sam