

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL W BAUGH
Claimant

KARL CHEVROLET INC
Employer

APPEAL 21A-UI-01654-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

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

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Russell Baugh (claimant) appealed a representative's November 24, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of March 22, 2020, because a leave of absence was granted by Karl Chevrolet (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2021. The claimant participated personally. The employer participated by Katie Kruger, Human Resources Manager, and Scott Sames, Commercial Sales Manager.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant started working for the employer on April 23, 2018, as a full-time commercial sales person. He was paid \$500.00 per week plus commission.

On March 25, 2020, the claimant became ill and the employer sent him home to prevent the spread of the coronavirus. The claimant attempted to test for the virus on March 25, 2020, April 8, 2020, and April 13, 2020. His physician instructed him to quarantine. On May 5, 2020, the claimant's test was inconclusive and the claimant continued to quarantine. On May 29, 2020, the claimant had a second test and the test was negative for Covid-19.

On May 1, 2020, the claimant applied for Family Medical Leave (FMLA) and the employer granted the claimant's request. He was on leave from June 1, 2020, through August 23, 2020. The claimant returned to work on August 24, 2020. He performed services through October 2, 2020.

For the week ending August 29, 2020, the claimant earned \$563.00. He reported to the agency that he earned \$00.00. The claimant received \$500.00 in unemployment insurance benefits. For the week ending September 5, 2020, the claimant earned \$500.00. He reported to the agency that he earned \$00.00. The claimant received \$500.00 in unemployment insurance benefits.

For the weeks ending September 12, September 19, and 26, 2020, the claimant earned \$500.00 each week and reported to the agency that he earned \$500.00. The claimant received \$125.00 in unemployment insurance benefits for each of those weeks. For the week ending October 3, 2020, the claimant earned \$2,104.00. He reported to the agency that he earned \$500.00. The claimant received \$125.00 in unemployment insurance benefits. The employer terminated the claimant and he did not work after October 2, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. His weekly benefit amount was determined to be \$500.00. The claimant received benefits from March 29, 2020, to the week ending October 31, 2020. This is a total of \$13,000.00 in state unemployment insurance benefits after the separation from employment. He received \$1,000.00 in Pandemic Emergency Unemployment Compensation. He also received \$10,200.00 in Federal Pandemic Unemployment Compensation for the seventeen-week period ending July 25, 2020. He received some Federal Pandemic Unemployment Compensation after July 25, 2020. The claimant also received in Lost Wage Assistance.

A disqualification decision was mailed to the parties' last known address of record on November 24, 2020. The claimant did not receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 4, 2020. The appeal was filed on December 16, 2020, which is after the date noticed on the decision. The claimant received the decision on December 12, 2020. He contacted the agency on Tuesday, December 15, 2020 and filed his appeal the following day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and

11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not receive the decision within ten days of the mailing date. After he received the decision, the claimant knew he was beyond his appeal time. Rather than filing his appeal immediately, he took four days to file his appeal.

The administrative law judge concludes that his failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The issue of whether claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

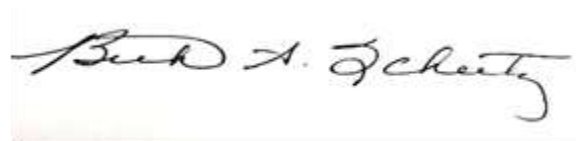
The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The November 24, 2020, reference 01, decision is affirmed. The appeal in this case was not timely. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 22, 2020.

The issue of whether claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge

March 02, 2021
Decision Dated and Mailed

bas/ol

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>.