

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YVES K SHABANI
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 20A-UI-10607-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

On September 1, 2020, the claimant filed an appeal from the August 12, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant effective June 14, 2020 based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 19, 2020. Claimant participated personally. The employer, Whirlpool Corporation, did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on August 12, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 22, 2020. The claimant telephoned Iowa Workforce Development a couple of days after he received the decision and was told to contact his employer because there was nothing that could be done about the decision. Claimant contacted Iowa Workforce Development again and was told that he could file an appeal. His appeal was filed online on September 1, 2020.

Claimant worked for the employer from May 29, 2019 through September of 2020, when he permanently separated. On or about June 14, 2020, claimant was off of work due to his own personal illness and quarantine when he was exposed to two household members that tested positive for COVID 19. Claimant returned to work after his quarantine on or about August 9, 2020.

The issue of whether the claimant was able to and available for work for the weekly-continued claims he filed from March 29, 2020 through June 13, 2020 has yet to be investigated. That matter shall be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 issued 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. Bd. 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 issuing 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). However, in this case, the claimant's delay in submission was due to division error or misinformation.

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.

As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to misinformation to the claimant by Iowa Workforce Development and the appeal shall be considered timely.

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", 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(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, the claimant was not able to and available for work due to illness and/or quarantine from June 14, 2020 through August 8, 2020. As such, the period of time he was not working is deemed to be a period of voluntary unemployment. Claimant has not established that he was able to and available for work pursuant to Iowa Code § 96.4(3). As such, regular unemployment insurance benefits funded by the State of Iowa are denied.

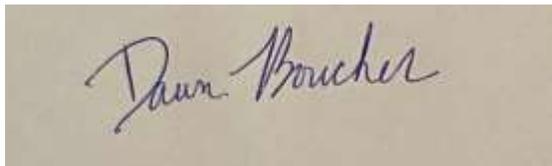
DECISION:

The appeal is timely. The August 12, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective June 14, 2020. Unemployment insurance benefits funded by the State of Iowa are denied effective June 14, 2020.

REMAND:

The issue of whether the claimant was able to and available for work for the weekly-continued claims he filed from March 29, 2020 through June 13, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.



Dawn Boucher
Administrative Law Judge

October 21, 2020
Decision Dated and Mailed

db/sam

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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.

- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.