

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA K GUNN
Claimant

MARKETLINK INC
Employer

APPEAL 21A-UI-23456-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (5R)**

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

The claimant/appellant filed an appeal from the June 14, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her being on a leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2021. The claimant participated personally. The employer participated through witness India Backstrom. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-23457-DB-T and 21A-UI-23458-DB-T.

ISSUES:

Is the appeal timely?

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence from work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated June 14, 2021 (reference 01) that found the claimant was not eligible for benefits was mailed to the claimant's address of record. Claimant never received it in the mail. Claimant filed an appeal on October 24, 2021 after receiving other decisions stating she was overpaid benefits.

Claimant began her employment with this employer on November 14, 2012. She had worked for the employer as a full-time clerical staff member. Her last day physically working on the job was March 19, 2020. Claimant was on a medical leave of absence from work beginning March 20, 2020. Claimant's doctor has instructed her that she is unable to work due to her long term COVID-19 related illness.

The issue of whether the claimant was paid eight times the weekly-benefit amount of her previous claim year to be eligible for benefits in a subsequent benefit year will be remanded to the Benefits Bureau for an investigation and determination. The issue of whether the claimant's permanent separation from this employer is disqualifying will be remanded to the Benefits

Bureau for an initial investigation and determination. The issue of whether the claimant was able to and available for work effective her claim year beginning March 22, 2020 will be remanded to the Benefits Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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.

In this case, the claimant filed an appeal after she learned that the denial decision existed, as she never received it in the mail due to postal service delay or error. As such, her appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2). The next issue is whether the claimant was able to work and available for work.

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 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 on a voluntary leave of absence from work and then was not able to work because of her long term COVID-19 related illness. As such, benefits are denied effective March 21, 2021 and continuing until the claimant establishes that she is able to and available for full-time work.

DECISION:

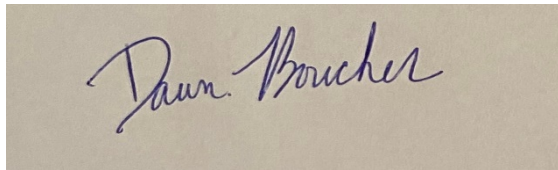
The appeal shall be considered timely. The June 14, 2021 (reference 01) decision is modified with no change in effect. Claimant was on a voluntary leave of absence from work and then because unable to work due to illness. Benefits are denied effective March 21, 2021 and continuing until the claimant establishes that she is able to and available for full-time work.

REMAND:

The issue of whether the claimant was paid eight times the weekly-benefit amount of her previous claim year to be eligible for benefits in a subsequent benefit year is remanded to the Benefits Bureau for an investigation and determination.

The issue of whether the claimant's permanent separation from this employer is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.

The issue of whether the claimant was able to and available for work effective her claim year beginning March 22, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style.

Dawn Boucher
Administrative Law Judge

December 22, 2021
Decision Dated and Mailed

db/db