

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARL RAMSDELL

Claimant

APPEAL 21A-UI-22294-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSCATINE LOGISTICS LLC

Employer

OC: 03/28/21

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 10, 2021 (reference 01) unemployment insurance decision that denied benefits effective March 28, 2021 finding claimant was on a leave of absence and, thus, not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on December 16, 2021. Claimant participated with his wife, Francis Ramsdell. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the correct address on June 10, 2021. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 20, 2021. Claimant appealed the decision online on October 7, 2021 after receiving subsequent overpayment decision. Claimant's appeal was received by Iowa Workforce Development on October 7, 2021.

Claimant is employed as a full-time Forklift Driver with Muscatine Logistics. Claimant was absent from work from March 26, 2021 through April 20, 2021 because he was sick with Covid-19. Claimant filed an initial claim for unemployment insurance (UI) benefits effective March 28, 2021. Claimant returned to work after April 20, 2021 and worked his regular hours thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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).

Claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant's appeal is considered timely.

The next issue to be determined is whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes claimant was not able to work from March 28, 2021 through April 20, 2021 due to illness; benefits are denied.

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. 871-24.22(1), (2) provide, in pertinent part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

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.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was unable to work due to illness. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The appeal is timely. The June 10, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 28, 2021
Decision Dated and Mailed

acw/ACW

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, but who are unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.