

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NORMAN E BORNTRAGER
Claimant

QUAKER MANUFACTURING LLC
Employer

APPEAL 21A-UI-22680-AR-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/28/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Norman E. Borntrager, filed an appeal from the October 28, 2020, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved leave of absence effective June 28, 2020. The parties were properly notified of the hearing. A telephone hearing was held on December 7, 2021, and was consolidated with the hearing for appeal numbers 21A-UI-22681-AR-T, 21A-UI-22682-AR-T, and 21A-UI-22684-AR-T. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. Department’s Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant’s appeal timely?
Was the claimant on an approved leave of absence effective June 28, 2020?
Was the claimant able to and available for work effective June 28, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became employed with this employer on September 9, 2019. He remains employed in a full-time capacity as a field operator as of the date of his hearing.

Each year, for the week of the July 4 holiday, the employer imposes a mandatory shutdown. Those employees who have not yet been employed for a year do not have access to PTO for use during the shutdown. This was the case for claimant during the week of June 28, 2020. The plant was shutdown for a week the week of June 28, 2020, and claimant was not yet eligible for PTO, so he filed for unemployment at the suggestion of the employer. The week of July 5, 2020, claimant returned to work in the same position, at the same wages, for his regular, full-time hours.

Claimant filed a claim for benefits with an effective date of June 28, 2020. He filed one weekly claim—for the week of June 28, 2020. He filed no other weekly continuing claims for benefits.

A disqualification decision was mailed to claimant's last known address of record on October 28, 2020. He did not receive the decision. He appealed the decision after he received two overpayment decisions, though he also received those decisions late. Claimant submitted his appeal on October 12, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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. 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period in question.

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", unnumbered paragraph (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—24.22(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.

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.

During the week of June 28, 2020, claimant was not on an approved leave of absence. Instead, the un rebutted evidence indicates that claimant did not work the week of June 28, 2020, because of the employer-imposed mandatory plant shutdown that occurs every year at the same time. Because claimant was not eligible for PTO, he filed a claim for unemployment benefits for the week in which he was subject to the plant shutdown. Claimant was otherwise able to and available for work. Benefits are allowed.

DECISION:

The October 28, 2020, (reference 02) unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant is able to work and available for work effective June 28, 2020. Benefits are allowed, provided claimant is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

January 7, 2022
Decision Dated and Mailed

ar/mh