

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NOEL J COLLINS
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL 21A-UI-20548-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (1)

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, Noel J. Collins, filed an appeal from the July 27, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant is on an approved leave of absence effective May 2, 2021. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2021. The claimant participated personally. The employer, REM Iowa Community Services, Inc., 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?
Is the claimant able to and available for work?
Is 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: Claimant became employed by this employer in May 2019 as a direct support professional. She remains employed with the employer in that role as of the date of her hearing.

At some point in 2020, claimant began medical leave. She qualified for FMLA. In approximately April 2021, she was allowed to return to work, but promptly became sick again. The employer allowed another period of leave. Claimant has since returned to work, though she is unable to return to work full time, and has been available to work PRN since approximately July 2021.

Claimant has also been unable to return to work full time because of her children’s child care and medical needs.

A disqualifying decision was mailed to claimant on July 27, 2021. Claimant did not remember when she received the decision, but believed she received it after the deadline for appeal, which was August 6, 2021. She explained that sometimes mail still goes to her old address, upstairs in the same building, even though her address has been updated. That is what occurred with the decision at issue here. When claimant received the decision, she attempted to appeal online. However, when she did not later receive correspondence from Iowa Workforce Development, she called to discover that her appeal had not transmitted successfully. She successfully submitted her appeal on September 15, 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). Claimant initially received the decision after the deadline for appeal. Thereafter, she attempted to appeal within a reasonable time, but the appeal did not transmit. She submitted her appeal in a reasonable time after discovering the unsuccessful transmission. The appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is no able to work and available for work effective May 2, 2021.

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(1)a 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.

(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.

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.

Claimant requested and was granted a leave of absence. In doing so, claimant made himself/herself unavailable for work during this time. Claimant is therefore not eligible for benefits during this period.

Even after the leave of absence period ended in July 2021, claimant has not been released or able to return to work full time. The employer is not obligated to accommodate a non-work related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The July 27, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant is not able to work and available for work effective May 2, 2021. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers her services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if she is involuntarily separated before that time.



Alexis D. Rowe
Administrative Law Judge

December 10, 2021

Decision Dated and Mailed

ar/abd