

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARBARA S SANOW
Claimant

APPEAL 21A-UI-11627-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUATRO COMPOSITES LLC
Employer

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On April 19, 2021, the claimant, Barbara S. Sanow, filed an appeal from the August 12, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence and was unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Wednesday, July 14, 2021, and was held together with appeal 21A-UI-11628-LJ-T. The claimant, Barbara Sanow, participated. The employer, Quatro Composites, L.L.C., participated through Jessi DeVries, HR Business Partner. No exhibits were admitted into the record. The administrative law judge now takes official notice of the administrative record.

ISSUES:

Is the 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 was employed full time with employer Quatro Composites, L.L.C., most recently as a thermoplastics technician, beginning April 10, 2017.

Claimant commenced a leave of absence on April 9, 2020, due to both her own personal illness and her husband's illness. This was early on during the COVID-19 pandemic, and the employer did not have procedures in place for removing employees with symptoms of the virus from the work environment. Claimant chose to stay home with her husband until April 27, 2020, when she voluntarily returned to work.

A disqualification decision was mailed to claimant's last known address of record on August 12, 2020. She did receive the decision in a timely manner. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision also contained a warning that

an appeal must be postmarked or received by the Appeals Bureau by August 22, 2020. The appeal was not filed until April 19, 2021, which is after the date noticed on the disqualification decision. Claimant read the decision when she received it. Rather than appealing the decision, she chose to call the agency and apply for Pandemic Unemployment Assistance (“PUA”) benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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). 00194 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).

Here, claimant received the August 12, 2020 decision and was aware of her right to appeal and the consequences of failing to file an appeal. Claimant chose to file for PUA benefits instead of file an appeal. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The August 12, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal, and the decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 23, 2021
Decision Dated and Mailed

lj/ol