

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS G NEGRETE
Claimant

IOWA MOLD TOOLING CO INC
Employer

APPEAL 21A-UI-08309-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
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
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 24, 2021, the claimant, Dennis G. Negrete, filed an appeal from the July 30, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Friday, June 4, 2021. The claimant, Dennis G. Negrete, participated. The employer, Iowa Mold Tooling Company, Inc., participated through Dawn Gamerdinger, HR Recruiter. No exhibits were offered or admitted into the record.

ISSUES:

Did the claimant file a timely appeal?
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 began his employment with employer Iowa Mold Tooling Company, Inc., on June 3, 1985. Claimant is currently employed with the employer as a full-time Painter A.

Claimant opened his claim for benefits in March 15, 2020, due to the pandemic. Claimant testified that he has a compromised immune system due to pre-existing conditions, and therefore his doctor advised him to quarantine during the early part of the COVID-19 pandemic. Based on this advice, claimant took a leave of absence from work. He did not return to work until June 1, 2020.

The parties agree that the employer's plant was completely closed the week of July 5 through July 11, 2020. That week, there was no work available for claimant or any other employee at the plant.

Claimant received the unemployment insurance decision dated July 30, 2020 (reference 01) that found him ineligible for benefits. Claimant immediately contacted Iowa Workforce Development and spoke with someone named Giselle, who told him that he had been overpaid and who he believed was going to help him resolve the issue. Giselle assisted claimant in applying for PUA benefits, and claimant believed this took care of the issue and no appeal was necessary.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are withheld from March 15, 2020, through May 30, 2020.

The first issue to resolve is whether claimant filed 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.

Here, claimant contacted Iowa Workforce Development immediately after receiving the decision and believed that the woman assisting him had helped him resolve the issue. He acted reasonably in relying on the agency representative and not filing an appeal. Therefore, the administrative law judge shall accept this appeal as timely.

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. 871-24.23(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.

Here, claimant relied on the advice of his medical provider and took a leave of absence from work to quarantine during the early months of the COVID-19 pandemic. While this decision may have been for compelling personal reasons, it was a period of voluntary unemployment. The administrative law judge finds claimant was ineligible for regular unemployment insurance benefits during this voluntary leave of absence, from March 15, 2020, through May 30, 2020.

DECISION:

The July 30, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was on a leave of absence and was not able to work from March 15, 2020, through June 30, 2020. Benefits must be withheld.



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

June 17, 2021
Decision Dated and Mailed

lj/scn