

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MADARAKA X KASIMU**  
Claimant

**DEE ZEE INC**  
Employer

**APPEAL 21A-UI-23014-AD-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19  
Claimant: Appellant (5)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

On October 15, 2021, Madaraka Kasimu (claimant/appellant) filed an appeal from the decision dated June 18, 2021 (reference 06) that denied unemployment insurance benefits as of May 31, 2020 based on a finding that claimant requested and was granted a leave of absence.

A telephone hearing was held on December 9, 2021. The parties were properly notified of the hearing. Claimant participated personally and with the assistance of a Swahili interpreter. Claimant's brother observed the hearing. Dee Zee Inc (employer/respondent) participated by HR Assistant Molly Reilly.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?

**FINDINGS OF FACT:**

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

There was no work available for claimant beginning March 23, 2020 due to a plant shutdown. Claimant was called back to work effective June 1, 2020. Claimant was unable to work at that time due to illness. Claimant continued to be unable to work through the week ending September 5, 2020, when she stopped filing weekly claims. She was terminated around that time. Claimant filed a claim for benefits each week from the benefit week ending April 4, 2020 through the benefit week ending September 5, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on June 18, 2021. That was claimant's correct address at that time. Claimant did not appeal at that time due to a language barrier. She believed the decision meant she would not receive benefits moving

forward, which she did not disagree with. She appealed when she received overpayment decisions about five months later.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated June 18, 2021 (reference 06) that denied unemployment insurance benefits as of May 31, 2020 based on a finding that claimant requested and was granted a leave of absence is MODIFIED with no change in effect.

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)(a) 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 on 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)
  - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 Unemployment Insurance Decision was mailed to claimant at the above address on June 18, 2021. That was claimant’s correct address at that time. Claimant did not appeal at that time due to a language barrier. She believed the decision meant she would not receive benefits moving forward, which she did not disagree with. She appealed when she received overpayment decisions about five months later. The administrative law judge finds there exists good cause for delay under these circumstances and therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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".

The administrative law judge finds claimant was unable to work due to illness from the week ending June 6, 2020 and continuing through the last week filed, the week ending September 5, 2020. Claimant was therefore ineligible for benefits during that period. The decision is modified solely to reflect that claimant did not request leave but was unable to work during that period.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated June 18, 2021 (reference 06) that denied unemployment insurance benefits as of May 31, 2020 based on a finding that claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant is ineligible for benefits from the week ending September 5, 2020.



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

December 17, 2021  
Decision Dated and Mailed

abd/abd

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.