

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**PATRICIA J HAIGH**  
Claimant

**NORDSTROM INC**  
Employer

**APPEAL 22A-UI-09286-S2-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On April 13, 2021, the claimant filed an appeal from the February 3, 2022, (reference 07) unemployment insurance decision that denied benefits because of a finding that claimant was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2022, and was consolidated with the hearing for appeals 22A-UI-09285-S2-T, 22A-UI-09287-S2-T, 22A-UI-09288-S2-T, 22A-UI-09289-S2-T, 22A-UI-09290-S2-T, and 22A-DUA-00064-S2-T. Claimant Patricia J. Haigh participated. Employer Nordstrom, Inc. did not participate. 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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 27, 2011. Claimant worked for employer as a part-time processor.

On March 31, 2020, employer closed its doors due to the COVID-19 pandemic. On May 12, 2020, employer contacted claimant to let her know it was reopening and asked if claimant was ready to return to work. Due to claimant's age and her husband's underlying health conditions that place them at greater risk for contracting COVID-19, claimant did not feel ready to return yet. Employer allowed claimant to take a leave of absence. On July 17, 2020, employer contacted claimant to ask her to return to work, but claimant did not feel comfortable doing so because of the risk to her and her husband's health. Employer terminated claimant's employment on July 17, 2020. Claimant could return to work in April 2021, after she and her husband received two doses of the COVID-19 vaccine.

A disqualification decision was mailed to claimant's last known address of record on February 3, 2022. 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 contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 13, 2022. The appeal was not filed until April 13, 2022, which is after the date noticed on the disqualification decision. Claimant did not receive the decision in the mail. The first notice of disqualification was the receipt of four overpayment decision dated April 8, 2022. The appeal was sent within ten days after receipt of those decisions.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes claimant's appeal is timely.

Iowa Code section 96.6(2) provides:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

In this case, the claimant 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 timely appealed four overpayment decisions and her appeal was applied to this decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is able to and available for work effective July 12, 2020. For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work.

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)c 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.

Here, claimant would not return to work due to concerns about the COVID-19 virus and the harm it could cause due to her age and her husband's underlying health conditions. Claimant removed herself from the job market and would not consider returning until she received the vaccine. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits effective July 12, 2020.

**DECISION:**

The appeal is timely. The February 3, 2022, (reference 07) unemployment insurance decision is affirmed. The claimant is not available for work effective July 12, 2020, and regular, state-funded unemployment insurance benefits are denied.



---

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

May 27, 2022  
Decision Dated and Mailed

sa/kmj