

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSELYN BIGGS

Claimant

APPEAL NO. 21R-UI-11752-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LITTLE ANGELS CHILDCARE CENTER

Employer

OC: 03/15/20

Claimant: Appellant (3)

Iowa Code § 96.5-3-a – Work Refusal
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.6(2) – Timely Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 6, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on July 14, 2021. Claimant participated personally. Employer participated by Michelle Bahr. Both Parties agreed to waive time and notice and additionally address the issue of whether claimant filed a timely appeal in this matter.

ISSUE:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: A decision was mailed to the claimant's last known address of record on October 6, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 16, 2020. The appeal was not filed until November 17, 2020, which is after the date noticed on the disqualification decision. Claimant stated that she did not receive the decision and only filed an appeal after contacting the local IWD office asking about the status of her claim.

Claimant worked as a full time childcare worker for employer. On February 12, 2020 claimant took leave from work in order to have time off for her pregnancy. Claimant had her child on March 12, 2020. Claimant planned on being off from work for 8 weeks after the childbirth. Employer made an offer of work to the claimant on April 24, 2020. That offer included the same terms that claimant had previously worked under, but employer stated that they could be flexible with the hours. Claimant declined coming back to work at the time when offered as she was not ready to return to work.

Employer contacted claimant again asking that she return to work on June 1, 2020 as employer had the great majority of the children returning to the childcare center on or around that time. Claimant again stated that she did not wish to return. Employer took this second denial as a resignation and hired a different employee to fill claimant's position. On September 18, 2020 claimant called employer asking for her job. As the position had already been filled, employer declined to rehire claimant.

Claimant stated that part of her reason for declining to return is that employer did not keep the facility as clean as it should have been. Claimant further stated that workers would only do their job correctly when state inspections were occurring. Claimant offered no proof for these allegations and employer pointed to the fact that she has consistently been found to be running a safe and clean environment by state regulators.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did file a timely appeal in this matter, but that claimant was not able and available for work from the date she filed an original claim. Additionally, claimant did refuse a suitable offer of work as of April 24, 2020.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. IDJS*, 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. IDJS*, 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. IESC, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal as she did not receive the unemployment decision denying her benefits.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Next, the matters of whether claimant was able and available for work and whether claimant refused a reasonable offer of work will be addressed.

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.

Inasmuch as the pregnancy was not work-related the claimant has not established the ability to work after the date of filing her original claim. Claimant remained ineligible for unemployment benefits until the date of work refusal on June 1, 2020 when claimant chose to end her employment with employer by again refusing to return to work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

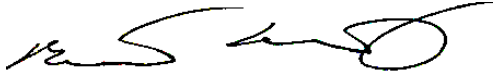
(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

As the claimant filed for unemployment benefits on March 15, 2020, a mere three days after giving birth, claimant is not eligible for benefits while on maternity leave. Claimant's leave continued until June 1, 2020 when employer was no longer willing to extend claimant's leave once again beyond a time when she'd previously agreed to return to work.

DECISION:

The decision of the representative dated October 6, 2020, reference 01 is modified in favor of employer. Claimant is not eligible to receive unemployment benefits from the date of March 15, 2020 as she was not able and available for work from that date. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

July 26, 2021
Decision Dated and Mailed

bab/mh