

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIM K STEVENS
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-24511-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (2)

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) - Timely Appeal

STATEMENT OF THE CASE:

On November 5, 2021, the claimant, Kim Stevens, filed an appeal from the January 22, 2021 (reference 01) unemployment insurance decision that denied benefits as of 05/10/20 based upon a determination that claimant was granted a leave of absence, making them voluntarily unemployed and not available for work. The parties were properly notified of the hearing. A telephonic hearing scheduled for January 4, 2022 at 8:00AM and the hearings were consolidated. The claimant participated. The employer, Swift Pork Company, failed to call the toll-free number listed on the hearing notice and did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal timely?
Is the claimant able to and available for work?
Was the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the undersigned finds:

Claimant has been employed with employer for thirty-four years. Claimant still works for the employer.

During the timeframe in question, employer sent everyone home for a for COVID-19 testing and regardless of the test result, employees could not return to work for fourteen days. Claimant took the test and tested negative for COVID-19. Claimant had no symptoms, felt fine, was able to work and would have preferred to work; but she was required to stay away from work due to the pandemic policy of employer at that time. After the fourteen days ended, claimant returned to work.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is timely.

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). 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).

Claimant only received the overpayment decisions and never received the decision denying benefits, the subject of this appeal. The appellant did not receive the decision denying benefits via the United States Postal Service. The untimeliness was not the fault of claimant/appellant. A good cause reason for the delay has been established. The appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.

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.

Claimant was on a mandatory leave of absence. Claimant did not request a leave of absence for the two weeks in question; she would have preferred to continue working. However, due to the pandemic, the employer required claimant and all other employees to not be at the place of employment for 14 days. Because it was the employer's choice that claimant was placed on a leave of absence and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The January 22, 2021 (reference 01) unemployment insurance decision is **REVERSED**. Claimant was able to work and available for work. Benefits are allowed, provided she is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

January 27, 2022
Decision Dated and Mailed

dh/mh