

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEVI A STICE
Claimant

MENARD INC
Employer

APPEAL 21A-UI-21435-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Levi A. Stice, filed an appeal from the October 23, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved leave of absence effective March 29, 2020. The parties were properly notified of the hearing. A telephone hearing was held on November 22, 2021, and was consolidated with the hearing for appeal numbers 21A-UI-21436-AR-T and 21A-UI-21437-AR-T. The claimant participated personally. The employer, Menard, Inc., participated through Dan Gerovac. Employer's Exhibit 1 was admitted. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant's appeal is timely.
Whether claimant is able to and available for work.
Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment as a full-time skilled yardhorse on December 31, 2013. He remains employed in that position as of the date of his hearing.

On March 28, 2020, claimant reported to the employer that he had a fever. The COVID-19 pandemic was just setting in at the time, so the employer sent claimant home. Initially, he was told he needed to be off work for a week. Later that night, claimant's supervisor, Travis, called and told claimant he needed to be off work for two weeks. Claimant never became so ill he could not have worked, but he could not return to work for the full two weeks because of the employer's policy regarding COVID-19. Claimant also never received a COVID-19 test,

because, as the time, the local hospital was not giving them under circumstances such as claimant's.

Claimant returned to work without restriction on April 17, 2020. He filed a claim for unemployment benefits with an effective date of March 29, 2020, and filed weekly continuing claims for that week and the following week, the week of April 5, 2020.

A disqualification decision was mailed to claimant's last known address of record on October 23, 2020. Claimant did not receive the decision. He filed an appeal on September 24, 2021, after he received two overpayment letters from Iowa Workforce Development.

The administrative law judge notes that claimant has been approved for Pandemic Unemployment Assistance (PUA) with an effective date of March 29, 2020. That PUA allowance remains in force as of the date of this decision.

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.

Iowa Code section 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. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). 00194 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 appellant 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). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issues to be considered are whether claimant was totally, partially, or temporarily unemployed and whether he was able to and available for work effective March 29, 2020. For the reasons that follow, the administrative law judge concludes that claimant was totally unemployed for the weeks of March 29, 2020, and April 5, 2020, but that he was not able to and available for work during that time.

Iowa Code section 96.19(38) was replaced by Iowa Code section 96.1A(37). Iowa Code section 96.1A(37) provides as follows:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Claimant did not work and reported no wages earned during the weeks of March 29, 2020, and April 5, 2020. Accordingly, he was totally unemployed during those weeks. However, he was not at work because he was not able to and available for work due to COVID-19 symptoms.

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.

While claimant was required to be off work for the period during which he filed for unemployment benefits, this was due to claimant's COVID-19 symptoms that he was experiencing. Accordingly, though claimant was totally unemployed for the two weeks at issue, he was not available for work during the same period, and benefits are denied.

DECISION:

The October 23, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant's appeal is timely. Claimant is not able to and available for work for the period from March 29, 2020, through April 11, 2020. Benefits are denied.

REMAND:

The matter is remanded to the Benefits Bureau of Iowa Workforce Development for the issuance of any PUA and associated FPUC benefit payments to which claimant may be entitled, as well as for the offset of any outstanding overpayment amount to the extent allowable.



Alexis D. Rowe
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

ar/scn