

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANY C MITCHELL
Claimant

CITY OF WESLEY
Employer

APPEAL 22A-UI-07281-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on a voluntary leave of absence effective March 15, 2020. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2022, and was held together with the hearing for appeal numbers 22A-UI-07282-AR-T, 22A-UI-07283-AR-T, 22A-UI-07284-AR-T, and 22A-UI-07286-AR-T. The claimant, Lany C. Mitchell, participated personally. The employer, City of Wesley, participated through City Clerk Stephanie Ricke. Department's Exhibit D-1 was admitted. 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?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became employed as the library director in August 1999. She remains employed in that role as of the date of her unemployment appeal hearing.

In March 2020, Governor Reynolds ordered the state's schools closed due to the COVID-19 pandemic. The library's policy is that it closes when schools close. Accordingly, the week of March 15, 2020, the library closed. No work was available to claimant until the library reopened for limited services in September 2020.

Claimant filed a claim for benefits with an effective date of March 15, 2020. She filed weekly continuing claims until the week ending October 24, 2020, and began reporting wages earned the week of September 6, 2020. She received partial benefit payments beginning September 6, 2020. Beginning September 27, 2020, she reported weekly wages in excess of her weekly

benefit amount, plus \$15, and she did not receive a benefit payment for the remainder of the time she filed claims. There was no barrier to claimant's continuing employment other than the library's closure due to the COVID-19 pandemic. She did not request time off during the period in which she was filing claims for unemployment insurance benefits.

A disqualification decision was mailed to claimant's last known address of record on May 5, 2021. She did not receive the decision. Claimant submitted an appeal on March 28, 2022, in response to overpayment decisions she received. That appeal was applied to this decision as the decision that created the overpayments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant was not on a leave of absence, and was able to and available for work effective March 15, 2020.

The first issue to be considered in this appeal is whether the 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). 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.

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) 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.

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.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, claimant has demonstrated to the satisfaction of the administrative law judge that she was able to and available for work for the period in which she was filing her claims for benefits between March 22, 2020, and October 24, 2020. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The May 5, 2021, (reference 01) unemployment insurance decision is reversed. Claimant's appeal is timely. The claimant is able to work and available for work effective March 15, 2020. Benefits are allowed, provided the claimant is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

May 27, 2022
Decision Dated and Mailed

ar/kmj