

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHANNON M YATES**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-22021-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Appellant (4)**

Iowa Code §96.6(2) – Timely Appeal  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Shannon M Yates, the claimant/appellant, filed an appeal from the December 1, 2020, (reference 02) unemployment insurance (UI) decision that denied REGULAR UI benefits as of August 16, 2020 because she was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on November 30, 2021. Ms. Yates participated and testified. The employer participated through Julie Hedley, human resources manager, and Erin Bewley, Corporate Cost Control hearing representative. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Yates' appeal filed on time?  
Is Ms. Yates able to and available for work?  
Is Ms. Yates on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Yates at the correct address on December 1, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by December 11, 2020.

Ms. Yates did not receive the decision in the mail. IWD issued two additional decisions finding Ms. Yates was overpaid REGULAR UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Yates received at least one of those decisions. Ms. Yates filed an appeal online on October 6, 2021. The appeal was received by Iowa Workforce Development on October 6, 2021.

The administrative law judge further finds: Ms. Yates began working for the employer on January 2, 2019. She worked as a full-time assistant manager.

On August 19, 2020, Ms. Yates' son received a positive COVID-19 test result. Ms. Yates tested negative. The employer's policy at the time provided that if a person with whom an employee resides tested positive for COVID-19, the employee was required to self-quarantine for 14 days. Ms. Yates self-quarantined from August 19 through September 2. Ms. Yates returned to work for her next scheduled shift on, or about, Saturday, September 4.

Ms. Yates called in sick on Monday, September 7 but otherwise worked when she was scheduled that week. The employer terminated Ms. Yates' employment on September 10. IWD issued a decision dated December 1, 2020, (reference 03) finding Ms. Yates eligible for benefits based on the September 10 dismissal from work.

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

For the reasons that follow, the administrative law judge concludes Ms. Yates' appeal of the reference 02 decision was filed on time.

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).

Ms. Yates did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Yates filed an appeal when she learned that she was overpaid benefits. Ms. Yates' appeal was filed on time.

The administrative law judge further concludes Ms. Yates was able to and available for work August 19, 2020 through the end of her employment on September 10, 2020.

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.

Ms. Yates has established that she was able to and available for work but she did not work because the employer's policy required her to self-quarantine. Ms. Yates was not sick. Since Ms. Yates was able to and available for work from August 19, 2020 through September 10, 2020, regular, state-funded unemployment insurance benefits are allowed for these weeks.

**DECISION:**

Ms. Yates' appeal was filed on time. The December 1, 2020, (reference 02) unemployment insurance decision is modified in favor of the appellant, Ms. Yates. Ms. Yates was able to and available for work from August 19, 2020 through the end of her employment with this employer on September 10, 2020. Benefits are allowed, provided she is otherwise eligible



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January 5, 2022  
Decision Dated and Mailed

dz/mh