

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY L JONES
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 20A-UI-14569-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 4, 2020, Courtney Jones (claimant/appellant) filed an appeal from the July 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on January 12, 2021. The parties were properly notified of the hearing. Claimant participated personally. Employer did not register a number for the hearing and did not participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant on an approved 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 claimant at the above address on July 23, 2020. That was claimant's correct address on that date. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 2, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant did not receive the decision; she only received subsequent overpayment decisions, which prompted her to appeal.

Claimant was a student at the University of Iowa during the period in question. As part of her schooling, she worked approximately 20 hours per week for the University of Iowa Hospitals and

Clinics. However, due to the pandemic, claimant and all other students who could return to their permanent residence were not permitted to remain in the residence halls. Claimant returned to her permanent residence, which is out of state. Claimant contacted employer to explain she could not continue employment as planned for that semester and into the summer due to her returning to her permanent residence. Employer indicated it understood and that the position would be available for her when she returned.

It appears claimant has submitted an application for Pandemic Unemployment Assistance (PUA). However, it does not appear the department has issued a determination on that application to date. Claimant filed a claim for benefits each week from the benefit week ending May 2, 2020 and continuing through the benefit week ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant requested and was granted a leave of absence is AFFIRMED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was

constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed her appeal the same day that she learned of the decision denying benefits. Claimant's appeal is 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. 871-24.23(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 requested and was granted a leave of absence during the period she returned to her permanent residence. Claimant requested the leave of absence due to employer mandating she return to her permanent residence, which in turn meant she could no longer work for employer. Nonetheless, claimant was not available for work during the period she was on a leave of absence, and regular, state benefits must therefore be denied. Claimant is therefore not eligible for benefits during this period, from the benefit week ending May 2, 2020 and continuing through the benefit week ending July 25, 2020.

The administrative law judge wishes to note that while this decision denies regular, state benefits, the evidence indicates claimant may well be eligible for Pandemic Unemployment Assistance (PUA). As noted above, it appears claimant has submitted an application for Pandemic Unemployment Assistance (PUA). However, it does not appear the department

has issued a determination on that application to date. Claimant may wish to follow up with the department on the status of that application.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 23, 2020 (reference 01) unemployment insurance decision that denied benefits as of April 26, 2020 based on a finding claimant requested and was granted a leave of absence is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 1, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.