

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANNON R JONES
Claimant

CBS STAFFING LLC
Employer

APPEAL 21A-UI-05398-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/08/20
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 R Jones, the claimant/appellant filed an appeal from the January 25, 2021, (reference 01) unemployment insurance decision that denied benefits as November 8, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2021. Ms. Jones participated and testified. The employer participated Brad Ortmeier, owner. Official notice was taken of the administrative record. Claimant's Exhibit A-D were admitted into evidence.

ISSUES:

Did Ms. Jones file her appeal on time?
Is Ms. Jones able to and available for work?
Is Ms. Jones 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. Jones at the correct address on January 25, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 4, 2021. Ms. Jones did not receive the decision in the mail. Ms. Jones later received a different Iowa Workforce Development decision, dated February 5 2021 (reference 02) that denied benefits as November 8, 2020. Ms. Jones appealed online on February 15, 2021. The appeal was received by Iowa Workforce Development on February 15, 2021.

The administrative law judge further finds: Ms. Jones began working for the employer, a temporary staffing agency, in August 2018. She worked until April 2019. She worked for the employer again in March 2020 and stopped working on July 11, 2020. Ms. Jones was pregnant. Ms. Jones stopped working due to her pregnancy. She gave birth in late July 2020. Ms. Jones asked the employer to put her in inactive status until September 2020.

Ms. Jones was ready to return to work in September 2020. The employer contacted Ms. Jones on October 1 to offer work. Ms. Jones was not able to work due to a lifting restriction. Ms. Jones was scheduled to attend work on November 1, 2020. Ms. Jones did not attend work because there were people who had tested positive for COVID-19 at the job site.

In early November 2020, Ms. Jones began experiencing medical issues, including COVID-19 symptoms. She was in and out hospital and going to multiple medical appointments to try to figure out what the issues were. In January 2021, Ms. Jones' doctor advised her to not drive and to not work due to her medical issues. Ms. Jones' doctor released her to return to work on April 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Jones' appeal in this case 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. Jones did not receive the decision in the mail and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Dunlap's delay in filing her appeal was due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service.

The administrative law judge further concludes that Ms. Jones is not able to and available for work from November 8, 2020 through April 11, 2021.

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(1), (2), (10) and (35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

(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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In this case, Ms. Jones was either ill or in the hospital from November 8, 2020, the effective date of her claim, through December 31, 2020 due to the medical issues she was facing. From January 2021 through April 11, 2021, Ms. Jones was under the care of her doctor who advised her not to work and to not drive due to her medical issues. Since Ms. Jones was not able to work from November 8, 2020 through April 11, 2021, regular, state-funded unemployment insurance benefits are denied during this time period.

Even though Ms. Jones is not eligible for regular unemployment insurance benefits under state law from November 8, 2020 through April 11, 2021, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during this time period. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

Ms. Jones' appeal was filed on time. The January 25, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Jones. Ms. Jones was not able to and available for work from November 8, 2020 through April 11, 2021. Benefits are denied during this time period. Benefits are allowed effective April 12, 2021.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 27, 2021
Decision Dated and Mailed

dz/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**