

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RIKKI N ROBERTS
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-23978-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Rikki N. Roberts, filed an appeal from the September 29, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant was not able to and available for work effective June 28, 2020, due to illness. The parties were properly notified of the hearing. A telephone hearing was held on December 20, 2021. The claimant participated personally. The employer, Hy-Vee, Inc., participated through its hearing representative, Barbara Buss, who did not testify, with testifying witness Jennifer Jones. 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?

Was the claimant able to and available for work effective June 28, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became employed with the employer on August 16, 2016. She remains employed as a part-time online shopper as of the date of her hearing. In her part-time role she works a regular schedule, but is not guaranteed a certain number of hours per week.

Claimant filed a claim for benefits with an effective date of June 28, 2020. Around that time, claimant was out of work and earning no wages because she was experiencing COVID-19 symptoms and was seeking a diagnosis. She underwent a number of COVID-19 tests, all with inconclusive results. Sometime later, she received a positive COVID-19 test result and was directed to continue to quarantine.

In September 2020, claimant returned to work for a brief period, before once again being out of work because her children's online school would not allow her to work her regular hours. The children were going to school online due to COVID-19. The claimant's and the employer's recollections differ regarding how long claimant was out of work beginning the week of

October 4, 2020. The employer's records indicate that claimant returned to work within a week or so, while claimant believed she was out of work through December. She reported no wages from the week beginning October 4, 2020, until the week ending January 9, 2021.

A disqualification decision was mailed to claimant's last known address of record on September 29, 2021. Claimant received the decision but did not initially appeal it. After speaking with Iowa Workforce Development representatives, she pursued an application for Pandemic Unemployment Assistance. The decision at issue here imposed a deadline for appeal of October 9, 2021, which was a Saturday. The following Monday, October 11, 2021, was a federal holiday on which mail is not delivered. Claimant submitted her appeal with a postmark date of October 12, 2021.

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). 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).

Though claimant did not initially intend to appeal this decision, and received the decision before the deadline to appeal, the appeal shall be accepted as timely. This is because the appeal deadline is extended to the next business day when the deadline falls on a weekend or holiday. Though the next business day for Iowa Workforce Development was Monday, October 11, 2021, that was federal mailing holiday. The first day on which claimant could have mailed her appeal after the stated deadline of October 9, 2021, was October 12, 2021, which was the date on which her appeal was postmarked. The appeal shall be accepted as timely filed.

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the period in question.

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(1) provides:

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.

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 was prevented from working her regular hours for various reasons, all related to COVID-19. Initially, she was restricted from working because she was seeking a COVID-19 diagnosis, then because she was positive for COVID-19. However, even after she was medically released to return to work, she took another period of leave related to child care and her children's online education. Claimant was not able to and available for work during the period in question. Benefits are denied.

Because the claimant and employer's testimony regarding when claimant returned to work differed, the issue of unreported wages from the period beginning in October 2020 will be remanded to the Integrity Bureau of Iowa Workforce Development for investigation.

DECISION:

The September 29, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant is not able to work and available for work effective June 28, 2020. Benefits are denied.

REMAND:

The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of unreported wages is remanded to the Integrity Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

January 24, 2022
Decision Dated and Mailed

ar/scn