

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID A MONTY
Claimant

APPEAL NO. 21A-UI-02340-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALUMINUM CO OF AMERICA
DAVENPORT WORKS**
Employer

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a late appeal from the July 8, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available to work. After due notice was issued, a hearing was held on March 4, 2021. Mr. Monty participated and presented additional testimony through Robert Bartholomew and Michael Nicholas. The named employer in interest did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-02341-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, the record of the weekly claims, the July 8, 2020, reference 01, decision and the December 22, 2020, reference 02, decision.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.
Whether the claimant was able to work and available for work during the three weeks between April 19, 2020 and May 9, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed full-time with Arconic, Inc. Arconic, Inc. appears in the Iowa Workforce Development records as the parent company of Aluminum Company of America. Aluminum Company of America appears in the Iowa Workforce Development records as a "doing business as" (DBA) of Arconic, Inc. The claimant is employed as a full-time worker at the employer's Davenport facility. The claimant works three to four 12 hour shifts per week. From Monday, April 20, 2020, through Friday, May 10, 2020, the employer furloughed, that is temporarily laid off, approximately 500 employees, including the claimant. The claimant remained ready, willing and able to report to the employer during that time. The claimant established an unemployment insurance claim that was effective April 19,

2020 and made weekly claims for the weeks that ended April 25, May 2 and May 9, 2020. The claimant received \$481.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of those weeks. The claimant discontinued his claim for benefits following the benefit week that ended May 9, 2020. The claimant returned to the same employment after the furlough ended.

On July 8, 2020, Iowa Workforce Development mailed the July 8, 2020, reference 01, decision to the claimant's Davenport last-known address of record. The decision denied benefits effective April 19, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available to work. The claimant had not requested and was not on a leave of absence. The reference 01 decision stated that it would become final unless an appeal was postmarked by July 18, 2020 or received by the Appeal Section by that date. The decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. July 18, 2020 was a Saturday and the next working day was Monday, July 20, 2020. The claimant did not receive the July 18, 2020 decision and, therefore, did not file an appeal by the July 20, 2020 effective appeal deadline. The claimant's first knowledge of the denial of benefits was the December 22, 2020, reference 02, decision that held the claimant was overpaid \$1,443.00 in benefits for the three weeks between April 19, 2020 and May 9, 2020. The reference 02 decision included a January 1, 2021 appeal deadline. The claimant filed an online appeal on December 28, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence in the record establishes good cause to treat the late appeal as a timely appeal. The claimant did not receive the July 8, 2020, reference 01, and therefore did not know about the decision or have a reasonable opportunity to file an appeal by the July 20, 2020 effective appeal deadline. The claimant's first knowledge of the decision that denied benefits came with the December 22, 2020, reference 02, overpayment decision. The claimant filed an appeal on December 28, 2020. The claimant did not unreasonably delay filing the appeal. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due either to any IWD error or United States Postal Service error, which provides good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to rule on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's

regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence the record establishes that the claimant was physically and mentally able to work and available for work during the three weeks between April 19, 2020 and May 9, 2020. During the claimant was temporarily laid off due to a lack of work. The claimant did not request a leave of absence and was not on a leave of absence. The claimant is eligible for benefits for the three weeks between April 19, 2020 and May 9, 2020, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The claimant's appeal was timely. The July 8, 2020, reference 01, decision is reversed. The claimant was able to work, available for work, but temporarily laid off during the three weeks between April 19, 2020 and May 9, 2020. The claimant is eligible for benefits for the three weeks between April 19, 2020 and May 9, 2020, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

March 15, 2021
Decision Dated and Mailed

jet/kmj