

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHELLEY L DAVIS**  
Claimant

**HUMBOLDT ST MARYS**  
Employer

**APPEAL 21A-UI-03918-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On January 27, 2021, the claimant, Shelley L. Davis, filed an appeal from the January 14, 2021 (reference 02) unemployment insurance decision that denied benefits for the week ending April 11, 2020, based upon a determination that claimant was working sufficient hours to be removed from the labor market and was therefore ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held on Monday, April 5, 2021. The claimant, Shelley L. Davis, participated. The employer, Humboldt—St. Mary's, participated through witness Cindy Johnson, Business Manager; and hearing representative Paul Jahnke represented the employer. The administrative law judge took official notice of the administrative record. During the hearing, the parties waived notice on the issue of whether claimant filed a timely appeal.

**ISSUE:**

Did claimant Shelley L. Davis file a timely appeal?  
Was claimant Shelley L. Davis able to and available for work for the one week ending April 11, 2020

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as the full-time secretary of the school in October 2017. She remains employed in this capacity with this employer.

On March 16, 2020, Governor Reynolds issued an edict closing K-12 school statewide due to the emerging COVID-19 pandemic. At that point, the employer closed the school and claimant began to work approximately one-quarter of her normal hours and began working from home. It was not the employer's voluntary choice to close its school in March 2020, nor was it claimant's voluntary choice to reduce her work hours. Due to the pandemic, there was simply limited work available.

During the week ending April 11, 2020, claimant filed a weekly continued claim for benefits. Claimant worked fourteen hours that week and was included in a six-hour paid holiday. Claimant reported \$294.00 when filing her weekly continued claim.

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on January 14, 2021. It is unclear from the record when claimant received that decision. Claimant testified that she does not regularly check her mail. However, she recalls checking her mail on January 19, 2021. She also testified that she appealed the decision as soon as she realized its significance.

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

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed.

As an initial matter, the administrative law judge must determine whether claimant filed a timely appeal. 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). 00194 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).

Here, the administrative law judge is not convinced that claimant received the unemployment insurance decision prior to the deadline on which to appeal. Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is able to and available for work. Iowa Code § 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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code § 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.

In order to be eligible for benefits, an individual must be able to and available for work. The claimant has presented credible testimony that she was partially unemployed due to the pandemic. Claimant worked less than a full-time work week and earned less than her weekly benefit amount plus fifteen dollars, which qualifies her for partial unemployment benefits for the week ending April 11, 2020. Benefits are allowed.

**DECISION:**

The January 14, 2020, (reference 02) unemployment insurance decision is reversed. Claimant was partially unemployed for the week ending April 11, 2021, and is eligible for unemployment insurance benefits.



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

April 08, 2021  
Decision Dated and Mailed

lj/ol