

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA CHASE
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-22576-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On September 20, 2021, claimant Rhonda Chase filed an appeal from the June 8, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was not eligible for regular unemployment benefits as she was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, December 7, 2021. Appeal numbers 21A-UI-22576-LJ-T, 21A-UI-20638-LJ-T, and 21A-UI-20640-LJ-T were heard together and created one record. The claimant, Rhonda Chase, participated. The employer, Kwik Trip, Inc., participated through Demi Miller. Department's Exhibits D-1 and D-2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant able to work and available for work effective March 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Kwik Trip, Inc., on July 17, 2015. Claimant is currently employed with the employer as a guest service coworker.

In 2020, claimant took a leave of absence from work to avoid exposure to COVID-19. Claimant's physician released her to return to work in the spring of 2021 on a limited part-time basis. Claimant and the employer agree that claimant could have worked additional hours, but claimant wanted to continue limiting her exposure to the public, so she chose to limit her hours spent working with the public.

The disqualification decision at issue was mailed to claimant's last known address of record on June 8, 2021. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the

Appeals Bureau by June 18, 2021. The appeal was not filed until September 20, 2021, which is after the date noticed on the disqualification decision.

Claimant shares a mailbox with her daughter and her two grandchildren. Usually, claimant's daughter or one of her grandchildren check the mail and place her mail somewhere in the home. Claimant does not remember seeing the June 8, 2021, decision finding she was not eligible for unemployment insurance benefits. The administrative law judge notes that claimant's benefits stopped paying out at the same time this decision was issued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not eligible for benefits.

As an initial matter, the administrative law judge finds claimant failed to file 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). 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 finds the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

Even if claimant's appeal is deemed timely, the administrative law judge finds claimant was not available for work effective March 21, 2021. 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(16) provides:


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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant testified that she was voluntarily limiting her availability for work and was only working a minimal amount, in order to reduce her exposure to COVID-19. While this may have been a wise personal decision, claimant was restricting her availability to the extent that she was no longer “available for work” as required by Iowa unemployment security law. Accordingly, benefits are withheld.

DECISION:

The June 8, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. Even if claimant’s appeal is deemed timely, claimant is not available for work. Benefits are withheld.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 14, 2021
Decision Dated and Mailed

lj/lj