

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EBUNGA M BILANGA
Claimant

APPEAL 22A-UI-01042-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Ebunga M. Bilanga, filed an appeal from the September 14, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was not able to and available for work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2022, and was consolidated with the hearing for appeal numbers 22A-UI-01043-AR-T and 22A-UI-01044-AR-T. The claimant participated personally, with witness Eliya Mpele. The employer, Tyson Fresh Meats, Inc., participated through Eugenio Ruiz. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record. CTS Language Link provided Swahili language services for claimant.

ISSUES:

Is the claimant's appeal timely?

Is the claimant able to and available for work effective May 10, 2020?

Is the claimant on an approved leave of absence effective May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a ham skinner from October 10, 2016, until this employment ended on May 25, 2021.

On May 7, 2020, claimant tested positive for COVID-19 during an employer-initiated test. He was off work for the following three weeks quarantining and recovering from COVID-19. During the time claimant was off work, he was not paid by the employer. However, claimant was later paid for 40 hours per week he was off work because he was off due to a positive COVID-19 test initiated by the employer. Claimant returned to work on June 1, 2020.

Claimant filed a claim for unemployment benefits with an effective date of May 10, 2020. He filed weekly continuing claims through the week that ended May 30, 2020. He reported no wages during that period.

A disqualification decision was mailed to claimant's last known address of record on September 14, 2020. He did not receive the decision. The only letter claimant received from Iowa Workforce Development (IWD) was a statement of a total overpayment amount that he received in approximately September 2021. This letter was not a decision letter with appeal rights printed on it. Claimant filed his appeal on December 7, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the 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).

The appellant 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 after he received a statement of overpayment from IWD, which did not include explicit appeal rights or deadlines for appeal. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are withheld.

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) 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.

Here, claimant was ill with COVID-19 during the period in which he filed for unemployment insurance benefits. He was mandated to be off work and was at home recovering from the illness during the weeks in which he filed for benefits. Accordingly, claimant was unavailable for work effective May 10, 2020, and benefits are denied.

DECISION:

The September 14, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant is not able to work and available for work effective May 10, 2020. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

February 22, 2022
Decision Dated and Mailed

ar/kmj

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. 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.

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is 101042, the pin number you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.