

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLEE K DOBBS
Claimant

EAGLE WINDOW & DOOR MFG
Employer

APPEAL 22A-UI-05861-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 7, 2022, claimant Kimberlee K. Dobbs filed an appeal from the March 24, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant was still employed at the same hours and wages effective December 13, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, April 18, 2022. Appeal numbers 22A-UI-05861-LJ-T and 22A-UI-05862-LJ-T were heard together and created one record. The claimant, Kimberlee K. Dobbs, participated. The employer, Eagle Window & Door Manufacturing, did not appear for the hearing and did not participate. 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:

Is the appeal timely?

Is the claimant able to work and available for work effective December 13, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employer, Anderson Window, opened a claim on her behalf in March 2020 related to the COVID-19 pandemic. Claimant received partial unemployment benefits in the spring and summer of 2020 through the workshare program. She testified that her employer filed the weekly continued claims on her behalf during this time period.

Claimant reopened her claim for benefits with an additional claim date of December 13, 2020, because her partner tested positive for COVID-19. Claimant filed for benefits for two weeks, for the week ending December 19, 2020, and the week ending December 26, 2020. Claimant was in quarantine due to her partner's illness the week ending December 19; she reported no wages and received her full benefit amount that week. The next week, claimant herself had contracted COVID-19. That week, she reported \$310.00 in vacation pay and received a reduced weekly benefit amount. Claimant testified she also received disability income from Anderson Window

for the weeks of work she missed due to personal illness, but she did not report this income because she did not receive it until January 2022.

The decision finding claimant was still employed and therefore ineligible for benefits was mailed to her last known address of record on March 24, 2021. She admits she may have received the decision and not paid attention to it. 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 April 3, 2021. The appeal was not filed until March 7, 2022, which is after the date noticed on the disqualification decision. Claimant explained that she retired in January 2021 and she may have disregarded a decision related to unemployment if it came in the mail after that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 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 were deemed timely, the administrative law judge finds claimant was not able to and available for work effective December 13, 2020.

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) and (10) provide:

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.

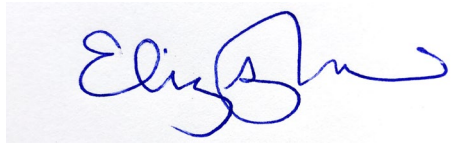
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, claimant was either removed from her place of work and in quarantine or

removed from her place of work due to personal illness during the time she was filing for benefits. Under either scenario, claimant is not considered able to and available for work. Therefore, benefits must be withheld.

DECISION:

The March 24, 2021 (reference 03) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. Furthermore, claimant was not able to and available for work and is not eligible for unemployment insurance benefits. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

April 21, 2022
Decision Dated and Mailed

lj/lj