

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHALEY NOLAND
Claimant

AADG INC
Employer

APPEAL 21A-UI-09211-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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) – Able & Available – Availability Disqualifications
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 1, 2021, the claimant filed an appeal from the March 5, 2021, (reference 01) unemployment insurance decision that denied benefits based on a finding the claimant was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2021. Claimant Chaley Noland participated. Employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal is timely?
Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 22, 2018. Claimant worked for employer as a full-time welder, until August 20, 2020, when he was separated from his employment.

Claimant developed bronchitis in the spring 2020. Because he suffers from underlying health issues, his doctor recommended claimant take some time off from work. Claimant applied for FMLA leave, but his request was denied. Instead, employer allowed claimant to take a 90-day leave of absence from work. Claimant called employer after his leave and left a message for human resources on one occasion, and called again on another date, but the switchboard operator disconnected him and he did not call back. In September 2020, claimant stopped into his workplace and learned his employment was terminated in August 2020 for failing to return to work. Claimant denied receiving the letter sent by employer informing him of the separation.

Claimant's separation from employment was addressed in a May 25, 2021 (reference 02) decision.

A disqualification decision was mailed to claimant's last known address of record on March 5, 2021. He did receive the decision within ten days. 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 March 15, 2021. The appeal was not filed until April 1, 2021, which is after the date noticed on the disqualification decision. Claimant mailed in an appeal from the post office on March 10, 2021. On April 1, 2021, he contacted the agency to receive a status update and learned the appeal was not received. He filed an online appeal that same day, as instructed to do so by agency staff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

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, subsection 10, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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. 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 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The appellant mailed his appeal by U.S. mail in a timely manner on March 10, 2021, but it was not received by the agency. Once claimant discovered that his appeal was not received by the Appeals Bureau, a second appeal was promptly filed. The delay was not the fault of the claimant, but likely due to a delay with the U.S. Postal Service. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective May 10, 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), (10) and (35) provide:

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

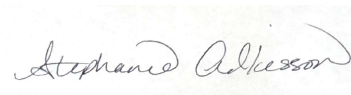
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

While claimant requested FMLA leave, he was granted a leave of absence as employer determined he was not eligible for FMLA leave. Claimant has not established he is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

DECISION:

The appeal is timely. The March 5, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective May 10, 2020, and regular, state-funded unemployment insurance benefits are denied.



Stephanie Adkisson
Administrative Law Judge
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June 29, 2021
Decision Dated and Mailed

sa/kmj