

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRINITY D KEMPER**  
Claimant

**HY VEE INC**  
Employer

**APPEAL 22A-UI-07184-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4(3) - Able and Available/Work Search  
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of absence

**STATEMENT OF THE CASE:**

On March 14, 2022, Claimant/appellant, Trinity Kemper, filed an appeal from the January 26, 2021, (reference 01), unemployment insurance decision that denied benefits as of 11/15/20 due to records showing claimant requested and was granted a leave of absence and was therefore voluntarily unemployed and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on May 6, 2022. Employer, Hy-Vee, Inc., participated through Barbara Buss, party representative and Lee Kenyon, assistant vice-president of human resources. Claimant personally participated. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-07184-DH-T, and 22A-UI-07186-DH-T. Judicial notice was taken of the administrative record, including the appeal attachments.

**ISSUES:**

Is the appeal timely?  
Is the claimant on an approved leave of absence?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Claimant was a full-time inventory control coordinator with a start date of October 28, 2020.

Claimant never received the January 26, 2021, (01) decision, only learning of her denial of benefits through the March 10, 2022, (03) overpayment decision and that was timely appealed.

Claimant was exposed to COVID-19, as those in her household tested positive for COVID-19. She notified her employer of her exposure and that she did not test positive. Claimant was told that the mandatory policy was for claimant to stay home and that she could not return to work for two weeks. Claimant did not ask for a leave of absence. Per employer's policy, she had to stay home and did so from November 20, 2020, through December 4, 2020. Claimant was not sick and could have worked, but for the employer's policy to stay home.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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).

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). Claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issues are whether claimant was able to and available for work; did she request a leave of absence and was on an approved leave of absence. It is determined that claimant was able to and available to work and was not on a requested leave of absence.

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(10) provides:

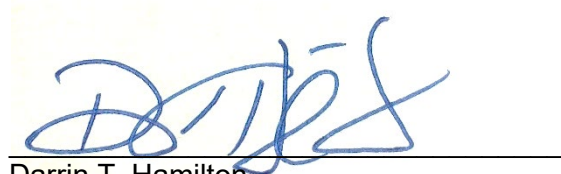
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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 on a mandatory leave of absence from November 20, 2020 through December 4, 2020. Claimant did not request a leave of absence during these weeks; she would have preferred to continue working. However, due to the pandemic and the risk of exposing coworkers to COVID-19, the employer required claimant to quarantine since she was exposed to COVID. Because it was the employer's choice that claimant was placed on a leave of absence and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The January 26, 2021, (reference 01) unemployment insurance decision is **REVERSED**. Any benefits denied on this basis shall be paid, so long as she is otherwise eligible.



Darrin T. Hamilton  
Administrative Law Judge

May 27, 2022  
Decision Dated and Mailed

dh/scn