

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANA M KIRKPATRICK
Claimant

APPEAL 22A-UI-03820-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DAVENPORT COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 11/29/20
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:

The claimant/appellant, Jana M. Kirkpatrick, filed an appeal from the February 4, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on March 14, 2022. The hearing was held together with Appeal 22A-UI-03822-JC-T. Claimant participated personally. Employer/respondent, Davenport Community School District, participated through Shelli Godke, HR generalist. Official notice was taken of the administrative record. Department Exhibit 1 was admitted.

ISSUES:

Is the appeal timely?

Was the claimant able and available for work effective November 29, 2020?

FINDINGS OF FACT:

Having reviewed the evidence presented, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of November 29, 2020. She filed weekly continued claims for the two-week period between November 29, 2020 and December 12, 2020.

Claimant works full-time for this employer as a para-educator. She also works part-time for the City of Davenport in an after-school program with a preschool.

Claimant performed full-time work for this employer for the two-week period between November 29, 2020 and December 12, 2020. Claimant did not perform work for the City of Davenport for the two week period of November 29, 2020 and December 12, 2020 due to a COVID-19 shutdown.

An initial decision dated February 4, 2021 (reference 02) was mailed to claimant’s address of record. The decision contained a warning that an appeal must be filed by February 14, 2021.

Claimant did not receive the decision. Claimant learned of the disqualification decision through an overpayment statement (not decision). The day she received it, she contacted IWD and filed an appeal online (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten 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 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 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). The claimant timely appealed the overpayment statement, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was not able and available for work due to working full-time with this employer.

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 96.1A, subsection 38, paragraph "b", subparagraph (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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

For a totally 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.

Claimant in this case worked full-time for this employer, without change, during the period she filed her claim for unemployment insurance benefits. It was claimant's other part-time employment which led to her underemployment for the two weeks in question. The administrative law judge recognizes that claimant relied upon part-time employment/wages but based upon Iowa law, she would not meet the definition of being able and available for work for the two-week period between November 29, 2020 and December 12, 2020. Benefits are denied.

DECISION:

The February 4, 2021 (reference 02) initial decision is affirmed. The claimant's appeal is timely. The claimant was not able to and available for work between November 29, 2020 and December 12, 2020. Benefits are denied.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

March 25, 2022

Decision Dated and Mailed

jlb/kmj

NOTE TO CLAIMANT: Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). For information regarding the Pandemic Unemployment Assistance (PUA) program, please contact IWD at 1-866-239-0843 or email: UIclaimshelp@iwd.iowa.gov. On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>