

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENECA L MILLER
Claimant

JORDAN CREEK FAMILY MEDICINE CLINIC
Employer

APPEAL 21A-UI-24747-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/06/21
Claimant: Respondent (2)**

Iowa Code § 96.6(2) – Timeliness of protest
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On September 21, 2021, the employer Jordan Creek Family Medicine Clinic, filed an appeal from the August 18, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2022. The claimant, Jennica Miller participated personally. The employer, Jordan Creek Family Medicine participated through Dr. Basil Hassan and Office Manager Ansam Kahlil.

ISSUES:

Was the employer’s appeal timely?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a front desk receptionist starting October 30, 2020. On May 20, 2021 claimant left work and became ill. On May 22, 2021 claimant texted the employer that she needed time off due to her illness. On June 2, 2021 claimant received text messages from her coworkers asking if she had seen the front desk receptionist job posted on Indeed.com. On June 7, 2021 claimant returned to work for four hours while Dr. Hassan and Ms. Kahlil were out of the office on vacation. When claimant left that day she took her personal belongings from her desk with her. On June 14, 2021 the employer sent a text message to the claimant asking when she was going to return to work. Claimant replied that she wanted to return but could not return due to her illness. Claimant provided one doctors note for her to be off work from June 11 – 18, 2021. On June 18, 2021 the employer sent a text message to claimant asking how many hours she had worked on June 7, 2021. Claimant replied that she had worked four hours. On June 21, 2021 a new receptionist started working for the employer. From June 22, 2021 through July 12, 2021 claimant text each day indicating she was unable to return to work, with no response from the employer. Sometime in late June or early July claimant was released to return to work.

Claimant never notified the employer that she was released to return to work despite the fact that she was sending text messages daily. The employer had work available for the claimant. The employer did not receive notice of the decision allowing benefits. The employer only noticed it when it showed up on their account that had been charged. The employer appealed immediately thereafter.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In this case, the employer did not receive the notice of the decision. The employer did not have an opportunity to protest because, for some unknown reason, the notice was not received in a timely fashion. Without timely notice, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the appeal as soon as it was noticed that the employer's account was charged. Therefore, the appeal shall be accepted as timely.

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. 871-24.22(2)j(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

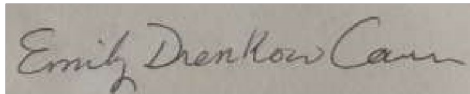
(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Claimant was on leave of absence negotiated with the employer. This is a period of voluntary unemployment for the claimant, who is those considered ineligible for benefits during that period. Claimant never indicated that she was eligible to return to work so from the employer's perspective the voluntary period of unemployment was continuing. The fact that the employer hired someone to fill in as the front desk receptionist is irrelevant. The employer never terminated the employment of the claimant. The claimant was released to return to work and failed to notify the employer of that fact. This would be the end of the leave of absence. Thus the claimant failed to return to work at the end of the leave of absence, and as such is considered to have voluntarily quit and is ineligible for benefits. Benefits are denied.

DECISION:

The employer's appeal is considered timely. The August 18, 2021, reference 01 unemployment insurance decision awarding benefits is reversed. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 24, 2022
Decision Dated and Mailed

ed/scn