

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FREWENYI G ABRAHA**  
Claimant

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**APPEAL 21R-UI-23716-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC:12/27/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Frewenyi G. Abraha, filed an appeal from the May 18, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits because claimant was not able and available for work.

A first hearing was scheduled for October 25, 2021. Claimant did not appear and the hearing was dismissed. After successfully requesting reopening to the Employment Appeal Board, the matter was remanded for a new hearing.

The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2021. The claimant participated personally and through a Tigrinya interpreter from CTS Language Link. The employer, Seaboard Triumph Foods LLC., did not participate. The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Appeal letter) was admitted. The administrative law judge left the record open after the hearing to allow claimant to provide a copy of a doctor’s note. It was received and admitted as Claimant Exhibit A. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?

Is the claimant able to and available for work effective December 27, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment in 2019 and worked full-time in production until December 12, 2020. Her permanent separation has been addressed in the reference 01 decision.

Claimant filed a claim for unemployment insurance benefits after separation from this employer. The effective date of her claim is December, 27, 2020. Claimant gave birth to her child on December 22, 2020. Claimant remained under her doctor’s care until June 8, 2021, when she

was released by her doctor to return to work without restrictions (Claimant Exhibit A). Claimant had been making weekly job search contacts for full-time. She has no restrictions to employability, has childcare (by working opposite her husband) and is otherwise able and available for work.

An initial decision dated May 18, 2021 was mailed to the claimant's address of record. The decision contained a warning that an appeal was due May 28, 2021. Claimant has limited English proficiency and required assistance in translating and understanding the document, which contributed to her delay in filing. Claimant filed the appeal on June 11, 2021 (Department Exhibit 1).

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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 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).

Based on the evidence presented, the administrative law judge concludes the claimant, in light of a language barrier, made a good faith effort to timely obtain assistance and file an appeal. The appeal is accepted as timely.

*For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective December 27, 2020 until June 7, 2021. Claimant is able and available for work effective June 8, 2021.*

For an 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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For the period of December 27, 2020 through June 7, 2021, claimant was under medical care and she was not available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits. Effective June 8, 2021, claimant presented sufficient evidence to establish she is able and available for benefits, provided she meets all other requirements (including making weekly continued claims.)

**DECISION:**

The unemployment insurance decision dated May 18, 2021, (reference 02) is modified in favor of the claimant/appellant. The appeal is timely. The claimant was not able and available for work for the period of December 27, 2020 and June 7, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied. Effective June 8, 2021, claimant is able and available for work. Benefits are allowed, provided she is otherwise eligible.

*Jennifer L. Beckman*

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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

January 20<sup>th</sup>, 2022  
Decision Dated and Mailed

jlb/rs

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

**ATTENTION:** 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/>