

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KARMA K GURUNG**  
Claimant

**DEE ZEE INC**  
Employer

**APPEAL 21A-UI-19548-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On July 19, 2021, Karma Gurung (claimant/appellant) filed an appeal from the August 31, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 31, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on October 26, 2021. The parties were properly notified of the hearing. Claimant participated personally and with the assistance of a Nepali interpreter. Dee Zee Inc. (employer/respondent) participated by HR Generalist Lacey Little. HR Assistant Molly Reilly participated as a witness for employer.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on January 8, 2018. Claimant was laid off due to a lack of work caused by the Covid-19 pandemic from March 23, 2020 until June 19, 2020. He returned to work on June 22, 2020 for approximately a week, until June 26, 2020. He was then out on medical leave beginning June 29, 2020. He returned to work on August 17, 2020. He was ill and unable to work during this time due to contracting Covid-19. He continued to work for employer until January 2021. Claimant filed a claim for benefits each week from the benefit week ending March 28, 2020 through the benefit week ending August 15, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on August 31, 2020. That was claimant's correct address at that time. Claimant did receive the

decision around that time. The administrative law judge finds claimant delayed in appealing due to a language barrier and because he had stopped filing for benefits by that time.

Claimant filed an application for federal Pandemic Unemployment Assistance (PUA) on July 19, 2021. That application has not yet been processed by the department.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The August 31, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 31, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. He is eligible for benefits as set forth below. Employer shall not be charged for benefits paid.

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)(a) 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 on 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)
  - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable

opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 administrative law judge finds claimant delayed in appealing due to a language barrier and because he had stopped filing for benefits by that time. The administrative law judge finds this is good cause for the delay under the circumstances and therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23 provides in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in

status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

The administrative law judge finds claimant was able and available for work and eligible for benefits from the benefit week ending March 28, 2020 through the benefit week ending June 20, 2020. This is because claimant was laid off due to a lack of work caused by the Covid-19 pandemic. Employer shall not be charged for benefits paid during this period, as the Department determined not to charge employers for Covid-19-related unemployment during that period.

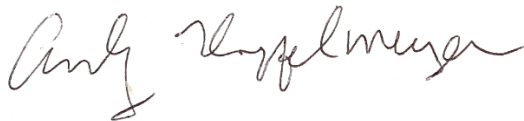
Claimant was not able and available or work and therefore ineligible for benefits during the other weeks filed. This is because he was either working as usual, as in the week ending June 27, 2020, or was unable to work due to being ill with Covid-19.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The August 31, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 31, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. He is eligible for benefits as set forth above. Employer shall not be charged for benefits paid.

**REMAND:**

Claimant filed an application for federal Pandemic Unemployment Assistance (PUA) on July 19, 2021. That application has not yet been processed by the department. This matter is REMANDED to the department for processing of claimant's PUA application.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

November 9, 2021  
Decision Dated and Mailed

abd/scn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.