

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARNA J HEITZ
Claimant

APPEAL NO: 21A-UI-17964-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WESTERN DUBUQUE COMM SCHOOL
DIST**
Employer

OC: 04/05/20
Claimant: Appellant (5R)

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 28, 2020, (reference 01) unemployment insurance decision that concluded she was ineligible for failing to report to IWD after being directed. After proper notice, a telephone hearing was conducted on October 8, 2021. The hearing was held together with Appeals 21A-UI-17966-JC-T, 21A-UI-17967-JC-T, 21A-UI-17968-JC-T, and 21A-UI-17969-JC-T. The claimant participated. Official notice of the administrative records was taken. Department Exhibits 1 and 2 were admitted.

ISSUES:

Is the appeal timely?
Did the claimant fail to report as directed or offer a good cause reason for failure to do so?
Was the claimant able to work and available for work effective July 19, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of April 5, 2020. Claimant is a substitute teacher for the employer. The administrative records do not support that claimant failed to report to any fact-finding interview or state inquiry on or around July 19, 2020, as referenced in the 01 decision.

The claimant was not able and available for work effective July 19, 2020 due to being high risk if exposed to COVID-19. Claimant's decision to not be available for work was supported by her treating physician.

Claimant has been approved for Pandemic Unemployment Assistance (PUA) benefits effective September 20, 2020. The issue of whether claimant's approval for benefits should be backdated has not been addressed by the Benefits Bureau.

An initial decision (reference 01) was mailed to claimant's address of record on September 28, 2020, stating she had failed to report as directed by a department representative. Claimant did not receive the initial decision. Approximately eleven months later, claimant learned of the disqualification through the overpayment decisions dated August 6 and 9, 2021. She timely appealed those decisions on August 15, 2021. See Department Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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(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).

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

The next issue is whether the claimant failed to report as directed by a department representative.

Each week a claimant files a claim for benefits she must be able to and available for work. Iowa Code § 96.4(3). To maintain continued eligibility, a claimant shall report as directed by an authorized representative. 871 IAC 24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. 871 IAC 24.23(11). The administrative records, nor the evidence presented support that claimant was notified by a department representative for an interview, investigation or other appointment and failed to report as directed on July 19, 2020. Therefore, the claimant is not ineligible for benefits for failing to report as directed.

The final issue to address is whether claimant is able to and available for work effective July 19, 2020.

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.

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.

Effective July 19, 2020, the undisputed evidence is the claimant was not able to work because she was advised by her doctor not to, due to being high risk if exposed to COVID-19. Claimant does not meet the eligibility requirements for regular state-funded benefits. Therefore benefits are denied.

The issue of whether claimant's PUA allowance can be backdated to July 19, 2020 is remanded to the Benefits Bureau for review.

DECISION:

The September 28, 2020, (reference 01) unemployment insurance decision is modified with no change in effect. The appeal is timely. The claimant did not fail to report as directed by a department representative. The claimant was not able and available for work effective July 19, 2020 and was under medical care. Therefore, regular state-funded unemployment insurance benefits are denied.

REMAND:

The issue of whether claimant's PUA allowance can be backdated to July 19, 2020 is remanded to the Benefits Bureau for review.



Jennifer L. Beckman
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October 13, 2021
Decision Dated and Mailed

jlb/mh