

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MIHWA H RUNNEBERG**

Claimant

**PJP INC**

Employer

**APPEAL 21A-UI-15336-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 29, 2021, the claimant filed an appeal from the September 9, 2020, (reference 01) unemployment insurance decision that denied benefits based on a finding that claimant limited her availability for work due to a lack of child care. A hearing was scheduled for August 18, 2021. Claimant requested the hearing be rescheduled due to a conflict with its attorney. The parties were properly notified of the new hearing date. A telephone hearing was held on September 28, 2021. The parties were properly notified about the hearing. During the hearing, telephone issues within the Appeals Bureau necessitated a continuance. The telephone hearing was continued and held on October 6, 2021, and was consolidated with the hearing for appeal 21A-UI-18154-S2-T. Claimant Mihwa H. Runneberg participated and was represented by Mary Hamilton. Employer PJP, Inc. participated through general manager Jeff Jung. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant's appeal timely?  
Is 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 began working for employer on November 14, 2019. Claimant worked for employer as a sales part-time sales associate, until her separation on November 30, 2020.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Claimant's child care provider would only accept children of essential workers and claimant did not have anyone else to watch her children. Additionally, claimant became concerned about her health and her family's health because she worked in close proximity to customers and masks were not required in the early days of the pandemic. She requested to take a leave of absence from her employer, and employer granted the request.

Employer had work available for claimant until April 4, 2020. On April 4, 2020, employer temporarily laid off its staff due to COVID. It reopened on May 4, 2020, and claimant returned to work shortly after the store reopened.

A disqualification decision was mailed to claimant's last known address of record on September 9, 2020. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 19, 2020. The appeal was not filed until May 29, 2021, which is after the date noticed on the disqualification decision. Claimant did not receive the decision, due to mail delivery issues in her apartment complex. The first notice of disqualification was the receipt of an overpayment decision dated May 25, 2021. The appeal was sent within ten days after receipt of that decision.

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

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes that it is.

Iowa Code section 96.6(2) provides:

*2. Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. Bd. 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 Dept 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 Dept 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 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). 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 claimant is able to work and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work for the two-week period ending April 4, 2020:

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. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

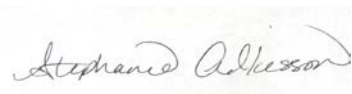
(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Here, claimant was on a leave of absence due to concerns about COVID-19 and a lack of child care. Claimant has not established she is able to and available for work, even under the United

States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. While claimant may have had good reasons to take a leave of absence, she is considered unavailable for work under Iowa law. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits between March 22, 2020, and April 4, 2020.

**DECISION:**

The appeal is timely. The September 9, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was not available for work for the two-week period ending April 4, 2020, and regular, state-funded unemployment insurance benefits are denied during this period.



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Stephanie Adkisson  
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October 8, 2021  
Decision Dated and Mailed

sa/scn