

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SASSOU HLONTOR
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 22A-UI-03642-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Appellant (2)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Sassou Hlontor, the claimant/appellant, filed an appeal from the August 18, 2020, (reference 01) unemployment insurance (UI) decision that denied benefits as of May 24, 2020 because Mr. Hlontor was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on March 8, 2022. Mr. Hlontor participated personally through a CTS Language Link French interpreter. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Hlontor's appeal filed on time?
Is Mr. Hlontor able to and available for work?
Is Mr. Hlontor on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Hlontor at the correct address on August 18, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 28, 2020.

Mr. Hlontor did not receive the decision in the mail. Earlier that month, a derecho storm had damaged Mr. Hlontor's apartment and disrupted mail service. On July 6, 2021, IWD issued two additional decisions finding Mr. Hlontor was overpaid REGULAR UI benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits because he was not eligible for benefits per the August 18, 2020, (reference 01) decision. Mr. Hlontor received those decisions in the mail in late December 2021. Mr. Hlontor was confused about why IWD told him he was overpaid benefits. Mr. Hlontor called IWD several times but was unable to reach a representative due to the long wait time. The language barrier made it challenging for Mr. Hlontor to understand what was going on. On January 31, Mr. Hlontor went to the IWD office in

Cedar Rapids to ask for help with his case. Mr. Hlontor filed an appeal via fax on January 31, 2022. The appeal was received by Iowa Workforce Development on January 31, 2022.

The administrative law judge further finds Mr. Hlontor began working for the employer on January 10, 2019. He works full-time as a refrigeration specialist technician. He previously worked in several other positions.

In late May 2020, Mr. Hlontor learned that a co-worker had tested positive for COVID-19. Mr. Hlontor would hang out with the co-worker often on breaks and during lunch. The employer's policy provides that if an employee is exposed to someone who tested positive for COVID-19, the employee must self-quarantine for 14 days. Mr. Hlontor self-quarantined from May 24, 2020 through June 6, 2020. Mr. Hlontor did not have any COVID-19 symptoms and he did not test positive for COVID-19. He returned to work after his self-quarantine and continues to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hlontor's appeal of the reference 01 decision was filed on time.

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).

Mr. Hlontor did not receive the decision before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When Mr. Hlontor received the overpayment decisions in December 2021, he tried, but was unsuccessful, in reaching IWD. Due to the language barrier, Mr. Hlontor was confused about why he was overpaid and what he could do about it. As soon as Mr. Hlontor understood that he could appeal, he filed an appeal. Mr. Hlontor has established good cause reason for the delay in filing his appeal. Mr. Hlontor's appeal of the reference 01 decision was filed on time.

The administrative law judge further concludes Mr. Hlontor is able to and available for work from May 24, 2020 through June 6, 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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Mr. Hlontor has established that he was able to and available for work from May 24, 2020 through June 6, 2020, but he did not work because the employer's policy required him to self-quarantine. Mr. Hlontor was not sick. Since Mr. Hlontor was able to and available for work from May 24, 2020 through June 6, 2020, regular, state-funded unemployment insurance benefits are allowed for these weeks.

DECISION:

Mr. Hlontor's appeal was filed on time. The August 18, 2020 (reference 01) decision is reversed. Mr. Hlontor was able to and available for work from May 24, 2020 through June 6, 2020. Benefits are allowed during these weeks, provided he is otherwise eligible



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March 23, 2022

Decision Dated and Mailed

dz/abd