

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEANNE M HARE**  
Claimant

**SIGNATURE HEALTHCARE LLC**  
Employer

**APPEAL 20A-UI-13000-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Jeanna M Hare, the claimant/appellant, filed an appeal from the August 24, 2020, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 16, 2020. The claimant participated and testified. The employer did not participate. Claimant's Exhibit A and B were admitted into evidence.

**ISSUES:**

Did the claimant file her appeal on time?  
Was 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: The Unemployment Insurance Decision was mailed to the claimant at the correct address on August 24, 2020. Claimant did not receive the decision. Claimant learned of the Unemployment Insurance Decision on, or about, October 13, 2020 from an Iowa Workforce Development representative as they worked to correct the claimant's wages from another employer. Claimant appealed the decision via email on October 21, 2020. The appeal was received by Iowa Workforce Development on October 21, 2020.

The administrative law judge further finds: The claimant works as an assignment registered nurse for the employer at full-time hours. During the week of May 25, 2020, the claimant had surgery. The claimant was in recover for four weeks. The claimant filed her initial claim on June 14, 2020.

The employer required a release from the claimant's doctor before the claimant could return to work. The claimant's doctor released her to return to work on August 4, 2020. The claimant returned to work the next week. The claimant wanted the doctor to release her to return to work before than August 4. The doctor did not because of the claimant's recovery from surgery and

the doctor's concern about the claimant's exposure to COVID-19 given her underlying health condition that made her immunosuppressed.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal 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).

Claimant did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Claimant learned of the decision on, or about, October 6, 2020. Claimant filed her appeal within the usual 10-day appeal period after learning of the decision. While claimant's appeal was submitted after the

deadline, claimant's delay was due to delay or other action of the United States Postal Service. Thus, claimant's appeal is considered timely.

For the reasons that follow, the administrative law judge further finds: The claimant is not able to work and available for work effective June 14, 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.

...

(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.

In this case, the claimant had surgery and four weeks of recovery. While in recovery, the claimant filed her initial claim. While the claimant would have preferred to return to work sooner, her doctor did not release her to return to work until August 4, 2020. The claimant has not established that she is able to and available for work effective June 14, 2020 even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits effective June 14, 2020.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 for the time period when she is not eligible for regular benefits. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The August 24, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective June 14, 2020 and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.



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Daniel Zeno  
Administrative Law Judge

January 13, 2021  
Decision Dated and Mailed

dz/mh

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.

If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**

**Your address has been updated for this decision only.** To update your address with all of Iowa Workforce Development, you may do so online or by calling 1-800-532-1483.