

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROSE M SAMPLES**  
Claimant

**MENARD INC**  
Employer

**APPEAL 21A-UI-03651-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

On January 23, 2021, the claimant, Rose M. Samples, filed an appeal from the July 14, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on a leave of absence and was therefore ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, March 17, 2021. The claimant, Rose M. Samples, participated. The employer, Menard, Inc., participated through Kyle Himan, First Assistant General Manager. No exhibits were admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did claimant Rose M. Samples timely file her appeal?  
Was claimant Rose M. Samples able to and available for work?  
Was claimant Rose M. Samples on a voluntary leave of absence effective April 26, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a morning stocker, beginning sometime in 2008.

As a response to the COVID-19 pandemic, the employer instituted a mandatory mask-wearing policy for both employees and customers effective late April 2020. The employer began notifying employees about this policy prior to implementing it.

Claimant told the employer that she was not able to wear a mask because of medical reasons. Claimant has one collapsed nostril and a heart condition, and she has trouble breathing when wearing a mask. The employer gave her three options: (1) wear a mask and continue working; (2) take a leave of absence; (3) have the employer terminate her employment. While claimant would have preferred to continue working, she was not able to work and comply with the mask mandate. Therefore, she opted for a leave of absence, as this was the only option that allowed her to remain employed.

Claimant's leave of absence lasted until June 26, 2020. At that point, she attempted to return to work. However, she felt harassed in her work environment. People kept asking her, "Where's your mask?" Additionally, things were out of place from when she last worked, and she had to spend considerable time fixing things. Finally, claimant's husband was ill and she needed to spend her time caring for him. Therefore, she submitted her resignation on July 4, 2020. Continued work was available, had claimant not opted to quit.

The unemployment insurance decision was mailed to the claimant's address of record on July 14, 2020. The appellant did not receive the decision. The first notice of disqualification was when claimant received the overpayment decision dated January 20, 2021. The appeal was sent within ten days after receipt of that decision.

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

For the reasons that follow, the administrative law judge concludes claimant was not on a voluntary leave of absence. Benefits are allowed, provided she is otherwise eligible.

As an initial matter, the administrative law judge determines claimant timely filed her appeal. 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).

Here, 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 first learned that she was not eligible for benefits when she received the overpayment decision in January 2021, and she immediately filed her appeal. Therefore, this appeal will be accepted as timely filed.

The second question is whether claimant was on a voluntary leave of absence and, therefore, ineligible for benefits. 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.

Here, claimant was on a mandatory leave of absence between April 26, 2020, and June 27, 2020. Claimant did not voluntarily request a leave of absence during these weeks; she would have preferred to continue working. However, due to the pandemic and the employer's mask mandate, claimant had no choice but to take a leave of absence. She could not continue working, because she was not medically able to wear a mask. Because it was the only medically safe accommodation that the employer offered claimant that would allow her to remain employed, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed, provided she is otherwise eligible.

## **DECISION:**

The January 14, 2020 (reference 01) unemployment insurance decision is modified in favor of claimant Rose M. Samples. Claimant was placed on a leave of absence and was otherwise able to and available for work from April 26, 2020, through June 27, 2020. Benefits are allowed for these weeks, provided she is otherwise eligible.



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March 19, 2021  
Decision Dated and Mailed

lj/ol