

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA D SCHOENEMAN**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 21A-UI-00144-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.23(10) – Eligibility – Leave of Absence  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On November 7, 2020, Jessica Schoeneman (claimant/appellant) filed an appeal from the May 14, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on February 3, 2021. The parties were properly notified of the hearing. Claimant participated personally. Kwik Trip Inc. (employer/respondent) participated by Store Leader Brian Mayer. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on November 11, 2016. Claimant is still employed there. Claimant requested and was granted a leave of absence from March 19 through May 21, 2020. Claimant returned to her normal position on May 22, 2020. Claimant filed a claim for benefits each week from the benefit week ending March 21, 2020 through the benefit week ending May 16, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on May 14, 2020. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 24, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant did receive the decision and file an appeal online. However, she did not hear further on the appeal and received an additional payment after that time and so believed the matter was resolved. She also stopped filing for benefits at that time. It was not until she received further decisions in late October 2020 notifying her that she had been overpaid benefits that she learned there was still an issue. She appealed shortly after receiving those decisions.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The administrative law judge has authority to address the underlying issues. The May 14, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant requested and was granted a leave of absence is **AFFIRMED**.

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)(a) 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 on 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)
  - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable

opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 Unemployment Insurance Decision was mailed to claimant at the above address on May 14, 2020. That was claimant’s correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 24, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant did receive the decision and file an appeal online. However, she did not hear further on the appeal and received an additional payment after that time and so believed the matter was resolved. She also stopped filing for benefits at that time. It was not until she received further decisions in late October 2020 notifying her that she had been overpaid benefits that she learned there was still an issue. She appealed shortly after receiving those decisions.

The administrative law judge finds the delay in appealing was due to department error. The appeal therefore is timely, and the administrative law judge has jurisdiction to address the underlying issues.

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.

Claimant requested and was granted a leave of absence from March 19 through May 21, 2020. In doing so, claimant made herself unavailable for work during this time. Claimant is therefore not eligible for benefits during this period.

**DECISION:**

The claimant's appeal was timely. The administrative law judge has authority to address the underlying issues. The May 14, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant requested and was granted a leave of absence is AFFIRMED.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

February 17, 2021  
Decision Dated and Mailed

abd/scn

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.