

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**EULALIO ANGEL ANGEL**  
Claimant

**INFINITY**  
Employer

**APPEAL 22A-UI-08670-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 24.1(113)(a) – Layoff

**STATEMENT OF THE CASE:**

On April 6, 2022, claimant Eulalio Angel Angel filed an appeal from the March 2, 2021 (reference 02) unemployment insurance decision that denied benefits based on a determination that he quit his employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, May 23, 2022. Appeal numbers 22A-UI-08670-LJ-T, 22A-UI-08671-LJ-T, and 22A-UI-08672-LJ-T were heard together and created one record. The claimant, Eulalio Angel Angel, participated. The employer, Infinity, did not call in and did not participate in the hearing. Department's Exhibits D-1 and D-2 were marked and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did the claimant file a timely appeal?  
Was the claimant laid off due to a lack of work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision denying claimant benefits based on a determination that he quit was mailed to his last known address of record on March 2, 2021. He did receive the decision sometime last year. 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 March 12, 2021. The appeal was not filed until April 6, 2022, which is after the date noticed on the disqualification decision.

When claimant received the decision in 2021, he took it to the local office in Marshalltown to ask questions. He does not remember anyone telling him that he could appeal at that time. Claimant remembers someone telling him that there was no overpayment showing in the system at that time and being told to "wait" until he received overpayment amounts to appeal. When claimant received the two overpayment decisions in March 2022, he promptly filed an appeal.

Claimant began working for Infinity in June 2020. Claimant worked full-time hours for the employer as a concrete finisher. He took time off for several weeks in late November and early December, first due to a transportation issue and next due to a family emergency. When claimant returned, he worked for several days and then he was laid off for the season.

Claimant worked a partial week during the one-week period prior to his layoff. There was not enough work to employ him and the other concrete finishers in their full-time positions that week. The following week, claimant called his boss to ask if the seasonal layoff would begin that week. His boss said there was not much work to do and he was still thinking about starting the layoff. The boss said he would call claimant with more information.

Claimant's boss did not assign him any work that week, so claimant did not work. Additionally, claimant never received a follow-up call from the boss with additional information on either continued work or the layoff. At that point, claimant assumed the layoff had started. He opened his claim for benefits effective December 20, 2020, and he began filing weekly claims. Claimant filed for benefits until February 2020, when his boss called him back to full-time work.

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

For the reasons that follow, the administrative law judge concludes claimant was laid off due to a lack of work.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

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).

The claimant's failure to file an appeal within the initial appeal period was solely because of incorrect information received from an IWD customer service advisor. When claimant went to the local office with the disqualification decision, he was advised to wait until he received an overpayment decision listing a dollar amount before he filed an appeal. Claimant's delay was prompted by and perpetuated by the agency. Therefore, the appeal shall be accepted as timely.

The next question is whether claimant was laid off due to a lack of work. Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 24.1(113) defines "separations" as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. *Layoffs.* A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
- b. *Quits.* A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. *Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty,

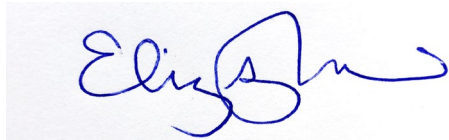
laziness, absenteeism, insubordination, failure to pass probationary period.

*d. Other separations.* Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Here, claimant's testimony establishes that his separation was a layoff due to a lack of work. Claimant was in contact with his employer early in the week and was prepared to accept shifts if they were offered to him. However, the employer had no work available. As claimant was laid off due to a lack of work, initiated by the employer without prejudice to the worker, benefits are allowed provided he is otherwise eligible.

**DECISION:**

The March 2, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

May 25, 2022  
Decision Dated and Mailed

lj/lj