

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAWRENCE E WITHROW
Claimant

APPEAL 22A-UI-07050-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 11/28/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timely Appeal
Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of absence

STATEMENT OF THE CASE:

Claimant/Appellant, Lawrence Withrow, filed an appeal on March 15, 2022, from the January 10, 2022, (reference 01) unemployment insurance decision denying benefits as of 11/28/21, finding claimant requested and was granted a leave of absence and was therefore voluntarily unemployed. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2022. Claimant personally participated. Employer, Tyson Fresh Meats, Inc., did not participate. Judicial notice was taken of the administrative record.

ISSUES:

Is the appeal timely?
Is claimant able to and available for work?
Is claimant on an approved leave of absence?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed by Tyson Fresh Meats, Inc. Claimant requested a leave of absence. Claimant started an approved leave of absence, just after Thanksgiving, on November 28, 2021. Claimant does not recall the specific date his leave of absence was scheduled to expire. Claimant knows that he returned to work sometime after 12/25/21 and before 01/01/22.

Claimant filed an appeal on March 19, 2022, regarding the January 10, 2022, decision, reference 01, the subject of this appeal. Claimant received the decision a couple of days prior to the March 7, 2022, reference 02 overpayment decision. That decision was mailed March 7, 2022, and claimant would not have received until March 8, 2022, at the absolute earliest. This would have claimant receiving the decision at hand on March 5, 2022, and with an appeal date of March 15, 2022, the appeal is timely.

Claimant filed for unemployment with a claim date of November 28, 2021. He has received benefits for a three-week period starting with benefit week ending (BWE) December 4, 2021,

through BWE December 18, 21, which covers the time window he was on an approved leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received until March 5, 2022. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa

1973). Claimant first learned of the decision when the decision arrived on March 5, 2022. Claimant filed her appeal with ten days of receipt of the decision. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work from November 18, 2021, through sometime between December 25 and 31, 2021, as he was on an approved leave of absence.

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 was on an approved leave of absence starting November 28, 2021, through late December 2021. The leave of absence ended when he was released to return to work sometime after Christmas and prior to the new year. Claimant was not able and available for work commencing November 28, 2021, through sometime between December 25 - 31, 2021. Since claimant did not file for, nor receive benefits for any week after the BWE 12/18/21, the exact date is moot.

DECISION:

The January 10, 2022, (reference 01) unemployment insurance decision finding that claimant was on a leave of absence and denied benefits as of November 28, 2021, is **AFFIRMED**. The appeal is deemed timely.



Darrin T. Hamilton
Administrative Law Judge

May 24, 2022
Decision Dated and Mailed

dh/kmj