

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**YACOB W BERHE**

Claimant

**APPEAL 23A-UI-04046-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 05/10/20**

**Claimant: Appellant (4-R)**

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 April 18, 2023, claimant Yacob W. Berhe filed an appeal from the January 22, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was on a leave of absence and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Monday, May 15, 2023. Appeal numbers 23A-UI-04046-LJ-T, 23A-UI-04047-LJ-T, 23A-UI-04048-LJ-T, and 23A-UI-04049-LJ-T were heard together and created one record. Claimant Yacob W. Berhe participated. A Tigrinya/English interpreter employed by CTS Language Link (ID number 16035) provided interpretation services for the hearing. Employer Swift Pork Company did not appear or participate in the hearing. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether claimant's appeal is timely. Whether there is good cause to treat claimant's appeal as timely filed.

Whether claimant is able to and available for work.

Whether claimant is on an approved leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in March 2019. Most recently, he worked full-time hours as a production employee. Claimant opened a claim for unemployment insurance benefits the week of May 10, 2020 due to COVID-19.

Claimant recalls getting sick with COVID-19 initially and staying home from work for a period of time. After a week or two, he attempted to return to work. The employer had people taking employees' temperatures at the gates, and claimant's temperature was too high for him to return to work. He went back home and stayed home for several more weeks. Claimant

thought the employer would call him to return to work, but no one called him. He then went to the work location, but his badge was deactivated and he could not get in.

Claimant filed weekly continued claims for benefits from the week of May 10 through May 16, 2020; through the week of August 9 through August 15, 2020. He received a total of \$6,734.00 in regular unemployment insurance benefits over the fourteen-week period. Claimant also received \$6,600.00 in FPUC benefits for the eleven weeks spanning May 10, 2020 through July 25, 2020; and \$900.00 in LWAP benefits for the three weeks spanning July 26, 2020 through August 15, 2020.

The disqualification decision was sent to claimant's former address in Ottumwa, Iowa on January 22, 2021. Claimant did not receive that decision. 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 February 1, 2021.

Next, the three overpayment decisions were all sent to claimant's former address on November 19, 2021. Claimant did not receive any of those decisions. Each decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 29, 2021.

Claimant moved from Ottumwa to his cousin's house in Charlotte, North Carolina in December 2020. He updated his address with the U.S. Postal Service at the time he moved. However, he believes something went awry with his mail forwarding, because he consistently failed to receive mail at his new address. Claimant did not receive any information from IWD until April 2023. When he learned that he was overpaid, he contested it because he was surprised. He called and spoke with someone, and he then filed an appeal on April 18, 2023.

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

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence through June 6, 2020. Thereafter, benefits are allowed.

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).

Here, claimant did not receive the disqualification decision. Therefore, he had no opportunity to appeal it. Claimant took action in calling IWD and then appealing as soon as he received notification of his disqualification and overpayments. For that reason, the appeal shall be accepted as timely.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

An individual claiming benefits has the burden of proof that he or she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant admits he was out due to COVID-19 for approximately one month, either due to a diagnosis or due to lingering symptoms. He was not able to be at work during any week that he was ill with COVID-19, and therefore he cannot be eligible for benefits for any of those weeks. Accordingly, claimant is not eligible for unemployment insurance benefits from May 10 through June 6, 2020.

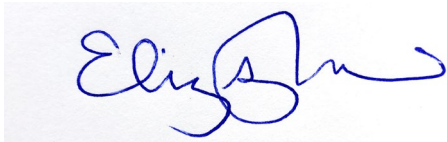
Effective June 7, 2020, claimant was recovered from COVID-19 and eagerly attempting to return to his employment. He is eligible for benefits from that point forward, provided he is otherwise eligible.

This matter will be remanded to examine claimant's eligibility based on his separation.

**DECISION:**

The January 22, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant/appellant. Claimant was on a leave of absence and not available for work from May 10, 2020 through June 6, 2020. Benefits are denied for those four weeks. Thereafter, benefits are allowed, provided he is otherwise eligible.

**REMAND:** This matter is remanded to the Benefits Bureau of Iowa Workforce Development to determine whether claimant is eligible for benefits based on his separation from Swift Pork Company in June 2020.



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Elizabeth A. Johnson  
Administrative Law Judge

May 18, 2023  
Decision Dated and Mailed

lj/lj

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.