

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER DAVIS
Claimant

IMAGINE THE POSSIBILITIES INC
Employer

APPEAL 22A-UI-04794-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Amber Davis, filed an appeal from the October 12, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits.

After proper notice, a telephone hearing was held on March 30, 2022. Claimant participated and employer participated through Shara Muller. The hearing was held together with Appeals 22A-UI-04795-JC-T, 22A-UI-04798-JC-T and 22A-UI-04801-JC-T. Department Exhibit 1 was admitted. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Was the claimant able and available for work effective April 5, 2020?

Was the claimant on a leave of absence?

FINDING OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established a claim for regular unemployment insurance benefits with an effective date of April 5, 2020. Claimant filed unemployment insurance benefits between April 12, 2020 and June 13, 2020. Claimant was absent from work between April 7, 2020 and June 15, 2020 when she took a voluntary leave of absence due to a lack of childcare in response to COVID-19. Claimant was paid 16.62 hours in PTO at \$11.22 per hour for the period, but otherwise was not paid by employer. Work was available for claimant during this period.

An initial decision dated October 12, 2020 was mailed to claimant’s address of record. The decision contained a warning that an appeal was due on October 22, 2020. Claimant did not receive the initial decision in the mail. Claimant learned of the overpayment through an overpayment statement in October 2021, but waited to learn about the overpayment until after filing a waiver to her (FPUC) overpayment. Claimant did not contact IWD when learning she

had been overpaid benefits as to **why** she was overpaid benefits. Claimant's appeal was filed on February 17, 2021, after claimant received an initial decision notifying her that her tax refund may be recovered to repay the outstanding overpayment (Department Exhibit 1).

Administrative records reflect claimant's request for waiver of the FPUC benefits was approved on March 28, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten 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 receive the initial decision when it was mailed, but was put on notice of an overpayment in October 2021 when she received an overpayment statement. Reasonably, claimant could have contacted IWD regarding the overpayment's existence if she had not received the underlying decision. Claimant did not, and waited until she received a later decision alerting her that part of her tax refund would be withheld to recover an overpayment of regular benefits. While claimant did not originally receive the initial decision within the prescribed period, she waited a minimum of three months (if using the last day in October as a date for calculation) to inquire about the overpayment and file an appeal. The administrative law judge concludes the delay in filing three months after notice of the overpayment was untimely given the circumstances in this case. Therefore, the appeal is not timely.

The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, even if the appeal was considered timely, the claimant would still be denied benefits as she was not able and available for work.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Iowa Admin. Code r. 871—24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available

for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The administrative law judge recognizes the claimant filed her claim due to hardship related to the COVID-19 pandemic. However, claimant in this case was on a leave of absence from due to a lack of childcare and therefore does not meet the eligibility requirements. Regular unemployment insurance benefits are denied.

DECISION:

The October 12, 2020 (reference 02) initial decision is affirmed. The appeal was untimely and therefore is dismissed. The initial decision denying benefits remains in effect.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

April 7, 2022
Decision Dated and Mailed

jlb/scn

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is 1 , the pin number you used for the hearing.**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>