

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOREN R LYNCH
Claimant

**EAGLE WINDOW & DOOR
MANUFACTURING**
Employer

APPEAL 21A-UI-04174-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On January 29, 2021, Loren Lynch (claimant/appellant) filed an appeal from the December 30, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 11, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on April 5, 2021. The parties were properly notified of the hearing. Claimant participated personally. Eagle Window & Door Manufacturing (employer/respondent) participated by HR Valerie Parr.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant works for employer full-time. Claimant filed a claim for benefits for the week ending October 17, 2020. This is because employer held him out of work on October 12 and 13, 2020 as a precaution. He was held out because he was awaiting COVID-19 test results for his son. Claimant was otherwise able to and available for work during those days. Employer allowed claimant to return to work on October 14, 2020, after it was confirmed that his son had not contracted COVID-19. Claimant has continued in his regular position since that time.

The Unemployment Insurance Decision was mailed to claimant at the above address on December 30, 2020. That was claimant's correct address at that time. Claimant did receive that decision. He was then working with employer's HR department to try to address the issue, as both claimant and employer agreed he should be eligible for benefits during the period in question. Claimant didn't believe he needed to do anything further at that point as he believed it would be addressed by employer. However he later determined through consultation with employer that he needed to file an appeal. Claimant did appeal at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The December 30, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 11, 2020 based on a finding claimant requested and was granted a leave of absence is REVERSED.

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 administrative law judge finds there is good cause for the delay in appealing. That good cause is claimant's belief, upon consultation with employer, that this matter could be resolved administratively without the need for a formal appeal. Claimant was diligent in working with employer to resolve the matter administratively and filed an appeal upon learning of the need to do so. The appeal is therefore 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.

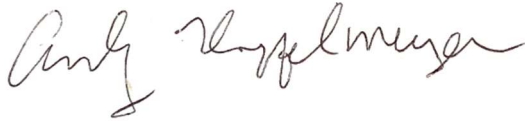
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant did not request a leave of absence. Claimant filed a claim for benefits for the week ending October 17, 2020 because employer held him out of work on October 12 and 13, 2020 as a precaution. He was held out because he was awaiting COVID-19 test results for his son. Claimant was otherwise able to and available for work during those days. Employer allowed claimant to return to work on October 14, 2020, after it was confirmed that his son had not contracted COVID-19. Claimant has continued in his regular position since that time.

Because claimant was able to and available for work but was held out of work during the above days, he is eligible for benefits during that period. Because the Department has determined not to charge employers for pandemic-related periods of unemployment and because claimant's unemployment was due to the pandemic, employer will not be charged for benefits paid.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The December 30, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 11, 2020 based on a finding claimant requested and was granted a leave of absence is REVERSED. Claimant is eligible for benefits during the week filed, provided he otherwise meets all eligibility requirements.



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

April 7, 2021
Decision Dated and Mailed

abd/kmj