

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREA M CORONA MINEROS
Claimant

RITA L SCHECHINGER
Employer

APPEAL 20A-UI-14195-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 3, 2020, Andrea Corona Mineros (claimant/appellant) filed an appeal from the June 25, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 22, 2020 based on a finding she requested and was granted a leave of absence.

Claimant submitted a request to withdraw the appeal prior to the hearing date. Appeals Bureau staff contacted claimant prior to the hearing date to confirm she wished to withdraw the appeal. Claimant indicated at that time that she was unsure whether she wished to withdraw the appeal. At the time of the hearing, claimant indicated she wished to proceed with the hearing.

As such, a telephone hearing was held on January 7, 2021. The parties were properly notified of the hearing. The claimant participated personally. Rita L Schechinger (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?
- III. Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on June 25, 2020. That was claimant's correct address on that date. However, claimant did not receive the

decision until several months later, when she called the department to check on the status of her claim. She appealed immediately upon learning benefits had been denied.

Claimant's first day of employment was July 1, 2018. Claimant is still employed by employer as a receptionist. Claimant was employed full-time until April 13, 2020, when claimant's doctor removed her from work due to the pandemic. This leave of absence continued until May 11, 2020, when claimant began a pre-planned maternity leave. Claimant has been found eligible for Pandemic Unemployment Assistance (PUA) from the benefit week ending March 28, 2020 and continuing through the benefit week ending May 9, 2020. See 20A-DUA-00908-NM-T.

Claimant returned to work on July 6, 2020. However, full-time hours were no longer available for her when she returned to work. Claimant was available to work full-time but has only been receiving approximately 15 hours per week since then. Claimant did not request a reduction in hours upon returning from leave. Claimant continues to be employed part-time by employer.

Claimant has filed for benefits each week from the benefit week ending March 28, 2020 and continuing through the benefit week ending September 5, 2020. Claimant's weekly benefit amount is \$336.00. Claimant reported wages earned in an amount less than her weekly benefit amount for the weeks ending March 28, April 4, and April 11, 2020. Claimant was employed full-time during those weeks but believes she may have requested time off for doctor's appointments or illness.

Claimant reported no wages earned from the benefit week ending April 18, 2020 and continuing through the benefit week ending July 4, 2020. Claimant reported wages earned in an amount less than her weekly benefit amount each week from the benefit week ending July 11, 2020 and continuing through the benefit week ending September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The June 25, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 22, 2020 based on a finding she requested and was granted a leave of absence is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed his appeal the same day that he learned of the decision denying benefits. Claimant's appeal is 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 96.19, 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.

The administrative law judge finds claimant was not able to or available for work from the benefit week ending March 28, 2020 through the benefit week ending July 4, 2020. During this period, claimant was either employed to such an extent that she was unavailable for work; was not able to work due to illness; or requested and was granted leave. As such, she is not eligible for regular, state unemployment benefits during this period. The administrative law judge notes that claimant has been found eligible for PUA from the benefit week ending March 28, 2020 and continuing through the benefit week ending May 9, 2020.

The administrative law judge finds claimant was able to and available for work from the benefit week ending July 11, 2020 and continuing through the benefit week ending September 5, 2020. She was working part-time hours during this time but was able to and available to work full-time hours. She is eligible for benefits during this period. However, because the claim has been classified by the department as pandemic-related and the department has determined not to charge employers in those circumstances, employer shall not be charged for benefits paid.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The June 25, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 22, 2020 based on a finding she requested and was granted a leave of absence is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.



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

January 26, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.