IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS

DIANE SIPES

Claimant

APPEAL 21A-UI-15784-SN-T

ADMINISTRATIVE LAW JUDGE DECISION

ABCM CORPORATION

Employer

OC: 03/21/21

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Diane Sipes, filed an appeal from the June 14, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was not able to and available for work for the week ending March 12, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on September 3, 2021. The claimant participated. The employer participated through Human Resources Officer Mandy Marovets and Administrator Rachel Johnson.

ISSUE:

Whether the claimant's appeal is timely? Whether there are other reasonable grounds for the appeal to be considered timely?

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending March 12, 2021?

FINDINGS OF FACT:

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

The claimant started working as a full time cook for the employer on June 4, 2012. The claimant last worked on March 9, 2021. On that date, the claimant fell ill due to a cardiac condition and spent time in the hospital for the remainder of March, as well as, the months of April and May 2021. The claimant has provided doctor's notes to her employer stating she has not been released to return to work. The last of these notes was provided to the employer on July 31, 2021. The claimant testified she is still not able to work due to this underlying illness.

A disqualification decision was mailed to the claimant's address of record on June 14, 2021. The claimant received the decision within 10 days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 24, 2021. (Exhibit D-1) The claimant sent an appeal by mail on June 15, 2021. lowa Workforce Development did not

ever receive this appeal. The claimant filed a second appeal online on July 14, 2021, immediately after discovering that the appeal she mailed had never been received. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is otherwise timely. The administrative law judge further concludes that the claimant was not able to work and available for work effective March 12, 2021.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disgualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant's first appeal was filed within the appeal period. This appeal was not received by lowa Workforce Development due to the US Postal Service. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant immediately appealed online after she discovered that Iowa Workforce Development had not received her earlier appeal. The claimant's appeal is timely.

However, the administrative law judge further concludes the claimant was not able and available effective March 12, 2021.

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. 871-24.22(1)a provides:

Benefits 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.

- (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
- a. *Illness*, *injury* or *pregnancy*. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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.

Iowa Admin. Code r. 871-24.23(1), (10) and (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (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.
- (35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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

The claimant has been ill and has not been released by her treating physician since leaving work on March 12, 2021. As a result, she is not able and available for work as outlined in Iowa Admin. Code r. 871-24.23(1) and (35). Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The June 14, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant was not able to work and available for work effective March 12, 2021. Benefits are denied.



Sean M. Nelson Administrative Law Judge Unemployment Insurance Appeals Bureau 1000 East Grand Avenue Des Moines, Iowa 50319-0209 Fax (515) 725-9067

September 14, 2021
Decision Dated and Mailed

smn/scn