

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEAGAN K DAYE
Claimant

APPEAL 22A-UI-04516-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLFAX-MINGO COMMUNITY SCHOOL DIS
Employer

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871—24.22(2)(I) – On-call Workers
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 16, 2021, (reference 04) unemployment insurance decision that denied benefits effective August 23, 2020, based upon a determination that claimant was still employed in an on-call capacity, and was therefore not unemployed within the meaning of the law. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2022, and was consolidated with the hearing for appeal numbers 22A-UI-04517-AR-T, 22A-UI-04518-AR-T, and 22A-UI-04521-AR-T. The claimant, Meagan K. Daye, participated personally. The employer, Colfax-Mingo Community School District, participated through Debra Hodgson, with Kelly Disney, who observed but did not testify. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant totally, partially or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant an on-call worker?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a substitute teacher from February 4, 2019, until this employment ended on October 18, 2019, when she resigned to accept other employment.

Claimant worked only a few shifts as a substitute teacher for the employer. She testified that she was not offered much work, despite frequently calling the school to see if work was

available. She last worked in October 2019, and then resigned to accept other employment that provided her with a better wage at a more stable schedule. The separation from employment has been the subject of the March 16, 2021, (reference 05) decision allowing benefits, and dictating that the employer would not be charged for benefits.

The decision at issue here states that claimant is denied benefits effective August 23, 2020. At that time, she was working full-time at a café. The café closed due to the COVID-19 pandemic, which caused claimant to file her claim for unemployment insurance benefits.

A disqualification decision was mailed to claimant's last known address of record on March 16, 2021. She did not receive the decision in the mail. Claimant filed a timely appeal in response to later overpayment decisions she received. Claimant filed her appeal on February 13, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 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. 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes as follows:

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 Code section 96.19(38), which has since become section 96.1A(37), provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Because claimant had separated from this employer well before August 23, 2020, she is totally unemployed as to this employer. Furthermore, claimant was able to and available for work during the period at issue because she was employed in a full-time job that was affected by the COVID-19 pandemic. Accordingly, benefits are allowed effective August 23, 2020. The department has determined that the employer's account shall not be charged for benefits paid to claimant in the March 16, 2021, (reference 05) decision.

DECISION:

The March 16, 2021, (reference 04), unemployment insurance decision is modified in favor of the appellant. Claimant's appeal is accepted as timely. Claimant was totally unemployed as to this employer and was able to and available for work. Benefits are allowed effective August 23, 2020.



Alexis D. Rowe
Administrative Law Judge

April 5, 2022
Decision Dated and Mailed

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