

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NERKESA HASANOVIC**

Claimant

**APPEAL 21A-UI-25202-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CALVIN COMMUNITY**

Employer

**OC: 04/05/20**

**Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment

Iowa Code § 96.7(2)a – Same Base Period Employment

Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On November 12, 2021, the claimant/appellant filed an appeal from the January 8, 2021, (reference 02) unemployment insurance decision that denied benefits based on claimant still employed in the same job for the same hours and wages as the original contract of hire. Claimant is not considered partially unemployed. Benefits denied as of April 4, 2020. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2022. The hearing was held together with appeals 21A-UI-25201-CS-T; 21A-UI-25203-CS-T; and 21A-UI-25204-CS-T and combined into one record. Claimant participated through her attorney Bruce Stoltze, Jr. Employer participated through Matt Puffer. Administrative notice was taken of Claimant's unemployment insurance benefits records.

**ISSUES:**

Is claimant's appeal timely?

Is the claimant able to work and available for work?

Does the claimant meet the definition of being considered partially unemployed?

Does the claimant meet the definition of being considered totally unemployed?

Does the claimant meet the definition of being temporarily unemployed?

Is claimant employed for the same hours and wages?

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: The unemployment insurance decision was mailed to the appellant's address of record on January 8, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated November 2, 2021. The appeal was sent within ten days after receipt of that decision.

Claimant began working for employer on April 25, 2014, as a full-time Certified Nursing Assistant. Claimant's hourly wage when she was hired was \$11.75 an hour. In March 2020, claimant was working full time as a CNA and earned \$14.74 an hour. On April 26, 2020, claimant's hourly wage was raised to \$15.03 an hour.

On March 23, 2020, Claimant provided Employer with a physician's note informing them that she was restricted from working from March 23, 2020, until June 30, 2020. Claimant has heart issues, a pacemaker, depression and anxiety and was directed to quarantine to limit her exposure to COVID.

Claimant returned to work the first week of July 2020. Claimant continued to work until August 28, 2020. COVID cases began to spike again and Claimant was concerned with being exposed. Claimant's anxiety began increasing and she was having a difficult time breathing while wearing a mask. Claimant informed her manager about her concerns and told her supervisor she could bring in a doctor's note. The manager did not require Claimant to bring in a doctor's note and put claimant on PRN status. Claimant was not called in to work and claimant did not schedule herself to work through the scheduling software that allows employees to pick up shifts. Claimant was not sure she would have returned to work if Employer called her to work a shift. Claimant was concerned with becoming infected with COVID. Claimant separated from the employer on January 14, 2021.

Claimant intended to file for Pandemic Unemployment Assistance (PUA) benefits when she filed for benefits. The claimant is unsure if she received a determination on whether she qualified for PUA benefits from April 5, 2020, through January 2, 2021.

## **REASONING AND CONCLUSIONS OF LAW:**

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

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 disqualified 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 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. 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 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.

The next issue is whether the claimant was able to work and available for work effective April 5, 2020.

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. 871-24.22(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(6) and (35) provides:

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

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

(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.

Claimant was put on a medical restriction prohibiting her from working from March 23, 2020, through June 30, 2020. Claimant's doctor directed her to quarantine during this time period due to her underlying health conditions. Since Claimant was under a doctor's restriction, Claimant is not available for work effective April 5, 2020. Benefits are denied.

The issue of whether claimant was totally, partially or temporarily unemployed and whether employer's account should be charged is moot because claimant was not available for work effective April 5, 2020.

**DECISION:**

The claimant's appeal is timely. The January 8, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective April 5, 2020. Benefits are denied.

The issue of whether claimant was totally, partially or temporarily unemployed and whether employer's account should be charged is moot because claimant was not available for work effective April 5, 2020.

**REMAND:**

The issue of whether this claim is retroactively eligible for PUA benefits from April 5, 2020, through January 5, 2021, is remanded to the Benefits Bureau for an initial investigation and determination.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 3, 2022  
Decision Dated and Mailed

cs/scn

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who were 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 under the program.** Additional information on how to apply for PUA can be found by calling the Benefits Call Center at: 1-866-239-0843 or emailing them at [uicclaimshelp@iwd.iowa.gov](mailto:uicclaimshelp@iwd.iowa.gov). If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.