

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**THOMAS W HOOPER**  
Claimant

**HUDSON STAFFING LLC**  
Employer

**APPEAL 21A-UI-01826-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5-3 – Accept Suitable Work

**STATEMENT OF THE CASE:**

Thomas Hooper (claimant) appealed a representative's July 24, 2020, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he refused recall to suitable work with Hudson Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2021. The claimant participated personally. The employer participated by Heidi Ouellette, Chief Executive Officer.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-01825.S1, 20A-UI-01826.S1, 20A-UI-01827.S1, 20A-UI-01828.S1, 20A-UI-01829.S1, and 20A-UI-01830.S1 were heard at the same time.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant refused suitable work and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was assigned to work for Vetcon from July 28, 2019, through September 28, 2020, as a full-time foreman. He quit work on October 5, 2020, because he had another job at Primoris T & D Services.

From April 5, 2020, through June 20, 2020, the claimant did not appear for work because he did not have childcare and/or had been exposed to Covid-19 and was quarantining. He told Vetcon he was not able to work. Vetcon allowed the leave and he returned to work on June 21, 2020.

The claimant filed for unemployment insurance benefits with an effective date of January 26, 2020. His weekly benefit amount was determined to be \$481.00. The claimant received benefits of \$481.00 for the week ending April 11, 2020, and \$4,810.00 from April 12, 2020,

2020, to the week ending June 20, 2020. He also received \$600.00 in Federal Pandemic Unemployment Compensation for the week ending April 11, 2020, and \$6,000.00 for the ten weeks ending June 20, 2020.

A disqualification decision was mailed to the parties' last known address of record on July 27, 2020. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 6, 2020. The appeal was filed on December 28, 2020, which is after the date noticed on the decision. The claimant appealed overpayment decisions.

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

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 claimant 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 Employment Security Commission*, 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.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(1), (8), and (10) provide:

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.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

(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 claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition or because they are caring for a child, they are considered to be unavailable for work.

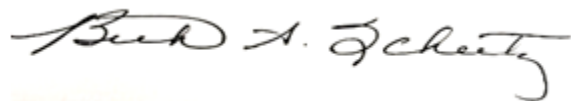
When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence to care for his child(ren) and to quarantine. The employer allowed the leave. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits from April 5, 2020, through June 20, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The July 24, 2020, reference 05, decision is affirmed. The appeal in this case was timely. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 12, 2020, to June 20, 2020.

*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 due to disqualifying separations, but who are currently 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 at <https://www.iowaworkforcedevelopment.gov/pua-information>.



---

Beth A. Scheetz  
Administrative Law Judge

March 5, 2021  
Decision Dated and Mailed

bas/mh