

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HELLEN A MORGAN

Claimant

CARING HEARTS HOME CARE, INC

Employer

APPEAL 20A-UI-10243-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (2)

Iowa Code § 96.19(38) – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On August 21, 2020, Hellen Morgan (claimant/appellant) filed an appeal from the July 28, 2020 (reference 02) unemployment insurance decision that denied benefits as of June 28, 2020 based on a finding claimant was not able to perform work at that time.

A telephone hearing was held on October 8, 2020. The parties were properly notified of the hearing. Claimant participated personally. Registered Nurse Elizabeth Morgan, claimant's daughter, participated as a witness for claimant. Employer participated by Owner Tom Schaeuble.

The parties waived notice on the issue of whether claimant was totally, partially or temporarily unemployed. 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 totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on July 28, 2020. That was claimant's correct address on that date. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 7, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision online on August 22, 2020. Claimant did not file the appeal until that date due to misinformation from the department. Specifically, claimant called in once she stopped receiving benefits and was told to just wait. Claimant called in again at a later date and was told she had to appeal.

Claimant began working for employer on August 10, 2018. Claimant is still employed there as a part-time caregiver. Claimant was never guaranteed a minimum number of hours in the position. She understood that the work would depend on need and the number of clients available.

Claimant was unable to work from June 26 until July 20 due to medical issues. She returned to her normal position with employer after that date. Around the time she returned, she requested she be limited to one evening and two overnights per week. This is because she would be traveling and then be starting back at her full-time position with Phoenix Children's Academy in September.

Claimant last worked for Phoenix Children's Academy in mid-March 2020. That position ended because of the pandemic. Claimant returned to her full-time position there on September 7, 2020. Claimant was out of state from August 16 until August 31, 2020.

Claimant's weekly benefit amount is \$518.00. Claimant reported earning less than this amount plus \$15.00 for each week from the benefit week ending April 11, 2020 and continuing through the benefit week ending August 15, 2020. She reported no earnings for the benefit week ending June 20 through the benefit week ending July 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 28, 2020 (reference 02) unemployment insurance decision that denied benefits as of June 28, 2020 based on a finding claimant was not able to perform work at that time is REVERSED.

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."

Claimant did not file her appeal before the deadline because she did not believe it was necessary due to information given to her by an Iowa Workforce Development employee. Claimant appealed once it was clear she should do so. The appeal is therefore timely.

Iowa Code section 96.19(38) 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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Claimant is eligible for benefits from the benefit week ending April 11, 2020 and continuing through the benefit week ending September 5, 2020, except as noted below. This is because she was separated from her full-time employment during this period and earning less than her weekly benefit amount plus \$15.00 from employer here.

She is not eligible for benefit from the benefit week ending July 4, 2020 and continuing through the benefit week ending July 18, 2020, as she was unable to work during that time due to medical issues. She is also not eligible for benefits for the benefit weeks ending August 15, 22, and 29, as she was out of the state and thus unavailable for work during that time.

As noted above, employer shall not be charged for benefits paid. This is because employer is a part-time employer and was receiving the same employment from employer during this time.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 28, 2020 (reference 02) unemployment insurance decision that denied benefits as of June 28, 2020 based on a finding claimant was not able to perform work at that time is **REVERSED**. Claimant is partially unemployed and eligible for benefits as set forth above. Employer's account shall not be charged.



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

October 14, 2020
Decision Dated and Mailed

abd/scn

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 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.