

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BREANN K TOLLEY
Claimant

AMES COMMUNITY SCHOOL DIST
Claimant

APPEAL 22A-UI-07590-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (5R)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment

STATEMENT OF THE CASE:

Breann K Tolley, the claimant/appellant, filed an appeal from the March 5, 2021 (reference 02) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits from April 12, 2020 through May 30, 2020 because Ms. Tolley worked enough hours to be considered employed for those seven weeks. The parties were properly notified of the hearing. A telephone hearing was held on May 11, 2022. Ms. Tolley participated personally. The employer participated through Kristin Johnson, director of human resources. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted as evidence.

ISSUES:

Is Ms. Tolley's appeal filed on time?
Is Ms. Tolley able to and available for work?
Is Ms. Tolley totally, partially, or temporarily unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Tolley at the correct address on March 5, 2021. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by March 15, 2021.

IWD also issued two other UI decisions dated March 5, 2021. The reference 03 UI decision denied REGULAR (state) UI benefits as of May 31, 2020 because Ms. Tolley was unemployed between academic years or terms and employees of an educational institution assigned to instruction, research or administration are not eligible for REGULAR (state) UI benefits between academic years or terms. The reference 04 UI decision denied REGULAR (state) UI benefits as of September 6, 2020 because Ms. Tolley was still employed with employer Ames Community

School District for the same hours and wages as in her original contract of hire. Ms. Tolley did not receive any of the three March 5, 2021 UI decisions in the mail.

Ms. Tolley had filed her initial claim for REGULAR (state) UI benefits because she was laid off from her other job with Polk County Conservation. IWD had issued a UI decision dated July 2, 2020, (reference 01) that allowed Ms. Tolley REGULAR (state) UI benefits in connection with Polk County Conservation because that employer put Ms. Tolley on short-term layoff.

IWD issued six additional UI decisions on March 22, 2022 finding Ms. Tolley was overpaid REGULAR (state) UI benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, Lost Wage Assistance Payment (LWAP) benefits, and Pandemic Emergency Unemployment Compensation (PEUC). Ms. Tolley received at least one of those UI overpayment decisions in the mail. Ms. Tolley filed an appeal online on March 30, 2022. The IWD Appeals Bureau received the appeal on March 30, 2022. IWD set up appeals for the six overpayment UI decisions and the three March 5, 2021 UI decisions.

The administrative law judge further finds: Ms. Tolley began working for the employer, a base period employer, on March 6, 2017. She worked as a full-time special education associate (paraeducator) on a ten-month appointment. The employer paid her \$13.97 per hour.

The employer closed in March 2020 per the governor's order because of the COVID-19 pandemic. The employer remained closed through the end of the school year, and paid Ms. Tolley her usual wages for full-time work through the end of the school year. On June 7, 2020, the employer sent Ms. Tolley a confirmation of employment letter telling her that she had been reappointed by the school board to work for the employer for the 2020-2021 school year. Ms. Tolley returned to work for the employer for the 2020-2021 school year and worked in her usual job at her usual pay. Ms. Tolley signed the confirmation letter for the 2020-2021 school year on October 21, 2020.

Ms. Tolley also worked for employer Polk County, a based period employer. She started working for this employer in 2019. She worked as a part-time clerk for Polk County Conservation and the employer paid her \$15.00 per hour. Ms. Tolley worked for this employer full-time during the summer, every other weekend and any during school breaks.

In April 2020, Polk County laid off Ms. Tolley because of the COVID-19 pandemic. Initially, Polk County laid off Ms. Tolley for one month. Polk County extended the layoff for several more months. Ms. Tolley stopped filing weekly UI claims when she went back to work for Polk County. The administrative record shows Ms. Tolley last filed a weekly UI claim for the week of September 27, 2020 through October 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Tolley's appeal of the March 5, 2021 (reference 02) UI decision was filed on time.

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) provides:

2. 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:

(2) 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Tolley did not receive the March 5, 2021, (reference 02) UI decision before the deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the March 5, 2021, (reference 02) UI decision was invalid. Ms. Tolley filed an appeal within ten days of receiving the overpayment decisions, which is when she first learned that she was not eligible for benefits. Ms. Tolley's appeal of the March 5, 2021, (reference 02) decision was filed on time.

The administrative law judge further 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) 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 Code section 96.7(2)a(2)(a) 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.

In this case, the employer paid Ms. Tolley as if she were working full-time from April 12, 2020 through May 30, 2020. Ms. Tolley was continuously employed with this employer for the same hours and same pay as in her contract of hire for those two weeks. Benefits are denied from April 12, 2020 through May 30, 2020.

Ms. Tolley may be eligible for UI benefits based on wage credits from her non-school employer, Polk County. Wage credits based on wages earned with the Ames Community School District should be removed from her base period.

DECISION:

Ms. Tolley's appeal was filed on time. The March 5, 2021, (reference 02) decision is MODIFIED WITH NO CHANGE IN EFFECT. Ms. Tolley was still employed in her job with this employer at same hours and wages as in her original contract of hire from April 12, 2020 through May 30, 2020. Benefits are DENIED for those weeks.

REMAND:

The issue of Ms. Tolley's eligibility for benefits based on her wage credits earned with her non-school employer, Polk County, is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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June 8, 2022
Decision Dated and Mailed

dz/mh