

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LYDIA D VANCE**  
Claimant

**FBG SERVICE CORPORATION**  
Employer

**APPEAL 21A-UI-01955-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (4/R)**

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

**STATEMENT OF THE CASE:**

Lydia Vance (claimant) appealed a representative's July 2, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits because she was ill and could not work at FBG Service Corporation (employer) as of April 12, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 25, 2021. The claimant participated personally. The employer indicated it would not participate in the hearing.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-01955.S1 and 20A-UI-01956.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 was 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 claimant worked for the employer from July 25, 2019, through May 18, 2020, as a full-time employee. She was sick and/or had Covid-19 symptoms a number of times. The claimant was not able to work due to sickness or quarantine the weeks ending April 25, May 9, and May 16, 2020. The employer terminated her on May 18, 2020.

She was also unable to work due to sickness or quarantine the weeks ending May 23, May 30, June 13, and June 20, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2020. Her weekly benefit amount was determined to be \$371.00. She filed an additional claim on August 9, 2020, and reopened her claim on September 6, 2020. The claimant received benefits of \$371.00 per week from April 12, 2020, to the week ending July 25, 2020. This is a total of \$4,823.00 in state unemployment insurance benefits after April 12, 2020. She also received

\$7,800.00 in Federal Pandemic Unemployment Compensation for the thirteen-week period ending July 25, 2020.

The claimant received \$2,587.00 in state unemployment insurance benefits and \$4,200.00 in Federal Pandemic Unemployment Compensation for the weeks she was unable to work due to sickness or quarantine.

A disqualification decision was mailed to the parties' last known address of record on July 2, 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 July 13, 2020. The appeal was filed on December 18, 2020, which is after the date noticed on the decision. The claimant filed her appeal when she received an overpayment decision.

### **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.

The next issue is whether the claimant was able and available for work as of April 12, 2020.

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. 871-24.23(1) provides:

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.

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.

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, they are considered to be unavailable for work. The claimant was sick and in quarantine because she was exhibiting Covid-19 symptoms. To prevent the spread of a deadly virus, the claimant could not work. She was not able and available for work during those periods of illness and quarantine. The claimant is disqualified from receiving unemployment insurance benefits for the benefit weeks ending April 25, May 9, May 16, May 23, May 30, June 13, and June 20, 2020.

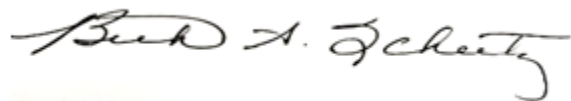
The issue of whether claimant has been overpaid Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The July 2, 2020, reference 02, decision is modified in favor of the appellant. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits for the benefit weeks ending April 25, May 9, May 16, May 23, May 30, June 13, and June 20, 2020.

The issue of whether claimant has been overpaid Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits for seven weeks. 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>.



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Beth A. Scheetz  
Administrative Law Judge

March 5, 2021  
Decision Dated and Mailed

bas/lj