

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRINITY L VANDORIN
Claimant

THRIVE TOGETHER LLC
Employer

APPEAL 22A-UI-00418-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 29, 2021, Trinity L. Vandorin (claimant) filed an appeal from the January 29, 2021, reference 01, unemployment insurance decision that denied benefits effective November 22, 2020, based upon the determination she was on an approved leave of absence with Thrive Together, LLC (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on January 25, 2022, and consolidated with the hearing for appeals 22A-UI-00420-SC-T and 22A-UI-00421-SC-T. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The department's Exhibits D1, pages 1 through 3, and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

ISSUES:

Is the claimant's appeal timely?

Is the claimant totally, partially, or temporarily unemployed and is she able to work, available for work, and actively and earnestly seeking work effective November 22, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in 2015 as a Bartender working 30 to 35 hours a week. During the week of March 15, 2020, the claimant filed for unemployment insurance benefits when the employer closed as a result of the global pandemic. The claimant's weekly benefit amount is \$159.00.

The claimant returned to work the week of May 23. However, the employer only had 13 hours available a week, or two shifts. The claimant earns \$4.35 an hour and approximately \$50 to \$75 in tips each shift.

The following shows the wages the claimant reported earning each week while filing for benefits and the wages the employer reported paying her each quarter:

Week Ending	Claimant Reported Wages Earned	Employer Reported Wages Paid	Difference
5/23/2020	\$50.00		
5/30/2020	\$90.00		
6/6/2020	\$120.00		
6/13/2020	\$101.00		
6/20/2020	\$90.00		
6/27/2020	\$60.00		
Total 2nd Quarter:	\$511.00	\$439.00	\$72.00
7/4/2020	\$55.00		
7/11/2020	\$80.00		
7/18/2020	\$80.00		
7/25/2020	\$0.00		
8/1/2020	\$30.00		
8/8/2020	\$35.00		
8/15/2020	\$500.00		
8/22/2020	\$300.00		
8/29/2020	\$200.00		
9/5/2020	\$300.00		
9/12/2020	\$300.00		
9/19/2020	\$300.00		
9/26/2020	\$300.00		
Total 3rd Quarter:	\$2,480.00	\$2,501.00	-\$21.00
10/3/2020	\$400.00		
10/10/2020	\$350.00		
10/17/2020	\$400.00		
10/24/2020	\$300.00		
10/31/2020	\$300.00		
11/7/2020	\$300.00		
11/14/2020	\$200.00		
11/28/2020	\$1.00		
12/5/2020	\$50.00		
12/12/2020	\$80.00		

12/19/2020	\$80.00		
12/26/2020	\$50.00		
Total 4th Quarter:	\$2,511.00	\$3,524.00	-\$1,013.00
Grand Total	\$5,502.00	\$6,464.00	-\$1,034.00

The claimant contends her hours were reduced when she reactivated her claim effective November 22, 2020. However, whether the claimant properly reported wages earned from November 22 through the week ending January 16, 2021, has not been investigated.

The unemployment insurance decision was mailed to the claimant's address of record on January 29, 2021. She did not receive the decision. The first notice of disqualification was the overpayment decisions dated October 28, 2021; however, the United States Postal Services (USPS) did not deliver the decisions to the claimant until November 28, 2021. The appeal was filed within ten days after receipt of those decisions.

REASONING AND CONCLUSIONS OF LAW:

I. Is the claimant's appeal timely?

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance 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 filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

II. Is the claimant totally, partially, or temporarily unemployed and is she able to work, available for work, and actively and earnestly seeking work effective November 22, 2020?

For the reasons that follow, the administrative law judge concludes that the claimant was partially unemployed and may be entitled to partial benefits. Benefits are allowed, provided the claimant earned less than \$174.00 each week effective November 22, 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 Code section 96.19(38) provides:

Definitions.

38. 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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual does not work or earn wages in any given week. However, temporary employment occurs when the employer does not have work for the claimant and the unemployment lasts for fewer than four consecutive weeks. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars.

In this case, the claimant worked and earned wages each week beginning November 22, 2020. Based on the information currently available and the claimant's unrefuted testimony, her hours were reduced by the employer and she earned less than \$174.00, or her weekly benefit amount plus fifteen dollars. Therefore, she was partially unemployed and considered able to and available for work. Benefits will be allowed for any week in which the claimant earned less than \$174.00.

Based on information reported by the employer, it appears the claimant has underreported wages earned during the fourth quarter of 2020. The claim is remanded to the Investigations and Recovery Unit of the Integrity Bureau to determine whether the claimant accurately reported her wages earned each week and whether she is subject to a penalty for misrepresentation.

DECISION:

The claimant's appeal is timely. The January 29, 2021, reference 01, unemployment insurance decision is reversed. The claimant is partially unemployed in any week in which she earned less than \$174.00 in gross wages. Benefits are allowed, pending the outcome of the remanded issue.

REMAND:

The claim is remanded to the Investigations and Recovery Unit of the Integrity Bureau to determine whether the claimant accurately reported her wages earned each week as delineated in the findings of fact and whether she is subject to a penalty for misrepresentation.



Stephanie R. Callahan
Administrative Law Judge

February 18, 2022
Decision Dated and Mailed

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