

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXAN NKAFU
Claimant

CARE INITIATIVES
Employer

APPEAL 21A-UI-23923-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

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 § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Alexan Nkafu, filed an appeal from the January 22, 2021, (reference 01) unemployment insurance decision that denied benefits effective November 15, 2020 based upon the conclusion he was unable to perform work due to illness at that time. The parties were properly notified of the hearing. A telephone hearing was held on December 16, 2021. The claimant participated and testified. The employer participated through Administrator Kaitlyn Lewis. The employer was represented by Unemployment Hearing Representative Ken Pess. Official notice was taken of the agency records.

ISSUES:

Whether the claimant's appeal is timely? Whether there are other reasonable grounds for his appeal to be considered timely?

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending November 15, 2020?

FINDINGS OF FACT:

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

The claimant started working for the employer as a part-time CNA on August 24, 2020. The claimant went to PRN status in 2020. His rate of pay was \$13.50.

The employer has a Covid19 spread mitigation practice which requires an employee who tests positive for Covid19 to quarantine for 10 days, if their symptoms diminish during that length of time. No negative test result or release is required for an employee to return from quarantine.

The claimant tested positive for Covid19 on November 6, 2020. The employer tested him because the claimant reported not feeling quite right on that day.

On November 7, 2020, the claimant received a call from Wapello County Public Health informing him that he was restricted from working for the next 10 days. That same day, the claimant started experiencing muscle aches in his back and he gradually lost his senses of taste and smell.

On November 16, 2020, the claimant returned to work. Work would have been provided to the claimant if he had not been positive for Covid19.

The administrative record KCCO shows the claimant made a weekly claim for the week ending November 21, 2020. He indicated he was not able and available for work that week.

A disqualification decision was mailed to the claimant's address of record on January 22, 2021. The claimant did not receive the decision. The first notice of disqualification was the overpayment decision of October 26, 2021. The appeal was sent immediately after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal has other reasonable grounds to be considered timely. He further concludes the claimant was not able and available for work for the effective November 15, 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. 871-24.22(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. 871-24.22(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 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.

(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.

(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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance,

conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds Administrator Kaitlyn Lewis' testimony regarding the date he tested positive and returned more credible than the claimant's testimony on those points. The administrative law judge found Ms. Lewis more credible because she had access to the employer's records at the time of the hearing. The claimant also did not seem very confident about the dates he was giving.

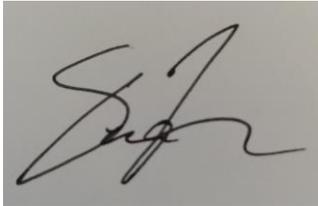
An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant did not make a weekly claim until the week ending November 21, 2020. The claimant returned to work on November 16, 2020. He did not report any disruption to his hours during the week he made weekly claims. In that context, the administrative law judge finds him disqualified under Iowa Admin. Code r. 871-24.22(26) because he was receiving the same hours and wages as contemplated in his contract for hire.

Assuming *arguendo* the claimant is the one who supplied the correct dates which placed him on quarantine during the period he made his weekly claim for November 21, 2020, the administrative law judge nevertheless still finds him disqualified. That is because the claimant said Wapello Public Health restricted him from working for his whole quarantine period. As a result, the claimant would be disqualified under Iowa Admin. Code r. 871-24.22 (35) because he was being restricted by his medical provider from working. An argument can also be made the claimant would have been disqualified under Iowa Admin. Code r. 871-24.23(1). While the claimant maintained his symptoms were minor, it is a *bona fide* occupational qualification that he be free from contagion in the performance of his duties. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The January 22, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective November 15, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 19th, 2022
Decision Dated and Mailed

smn/rs

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, but who are unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.