

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHALEIA MURRAY
Claimant

BIG GROVE IOWA CITY
Employer

APPEAL 21A-UI-10987-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of protest
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On April 6, 2021 the claimant/appellant, Shaleia Murray, filed an appeal from the August 6, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2021. The claimant participated personally. The employer participated through Noelle Murchey.

ISSUES:

Was the claimant’s appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision denying benefits was mailed to claimant's address of record on March 15, 2020, but was not received by claimant. The decision contains a warning that the claimant appeal is due ten days from the initial notice. The address on file is a valid address for the claimant; however, the claimant did not receive the decision. The claimant filed her appeal when she received her notice of overpayment in March 2021.

Claimant was employed full time by the employer as a server. Claimant was hired April 8, 2015. On March 15, 2020 claimant filed for unemployment benefits due to being laid off due to lack of work as a result of the COVID-19 pandemic. Claimant was recalled to work on May 15, 2020 but declined to return due to being type I diabetic, and as such being a high risk for COVID-19. Claimant was paid \$3108.00 of regular state unemployment insurance for the period of May 17, 2020 through June 27, 2020. Claimant returned to work after June 27, 2020 after being released by her doctor to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant has filed a timely appeal as required by the Iowa Employment Security Law.

Iowa Code § 96.6(2) provides in pertinent part:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant did not receive the notice of claim. The claimant did not have an opportunity to protest the notice of claim because the notice went to the wrong address and as such the notice was not received in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal upon receipt of the notice of the overpayment. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant was not able to or available for work.

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".

under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23 provides:

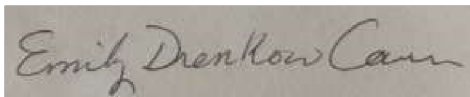
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (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.

Claimant was laid off due to a lack of work by the employer following the outbreak of the COVID-19 pandemic. When recalled to work on May 15, 2020 claimant requested and was granted a leave of absence due to her health condition. Such a voluntary leave of absence. Is deemed to be a period of voluntary unemployment during which the claimant is ineligible for benefits. Benefits are denied during the period of May 17, 2020 and June 27, 2020 after which she returned to work.

DECISION:

The August 6, 2020 (reference 02) unemployment insurance decision denying benefits is affirmed. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 20, 2021

Decision Dated and Mailed

ed/kmj