

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE K WELSH
Claimant

ASSOCIATE STAFFING LLC
Employer

APPEAL 21A-UI-01923-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On December 30, 2020, the claimant, Jamie K. Welsh, filed an appeal from the July 7, 2020 (reference 07) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work effective March 22, 2020, due to surgery. The parties were properly notified of the hearing. A telephonic hearing was held on Friday, February 26, 2021. The claimant, Jaime K. Welsh, participated. The employer, Associate Staffing, L.L.C., participated through Amanda Fahy, Operations Manager. Claimant's Exhibit A and Department's Exhibit D-1 were received and admitted into the record without objection.

ISSUES:

Did claimant Jamie K. Welsh file a timely appeal?
Was claimant Jaime K. Welsh able to and available for work effective March 22, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a temporary employee assigned to Jeld-Wen, beginning March 2, 2020. Claimant's assignment ended at Jeld-Wen on March 16, 2020, when she took a leave of absence to quarantine due to the COVID-19 pandemic.

Claimant was scheduled to have breast cancer surgery on April 13, 2020. However, her surgery was postponed for over one month due to the pandemic. Claimant ultimately had surgery on March 18, 2020.

Claimant was healing after surgery for several months. In August 2020, she reached back out to Jeld-Wen and to the employer to let them know she would not be coming back to work. She ended up finding a job closer to home that required less physical work, which was ideal for her following her surgery.

The unemployment insurance decision was mailed to the appellant's address of record on July 7, 2020. The appellant did not receive the decision. The first notice of disqualification that claimant received was the overpayment decision that arrived in December. The appeal was sent within ten days after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence through August 1, 2020, and was therefore not available for work. Benefits are withheld.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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, subsection 10, 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.

In this case, 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 Emp't Sec. Comm'n*, 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 claimant is currently able to and available for work. Iowa Code § 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 Admin. Code r. 871-24.23(10) provides:

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

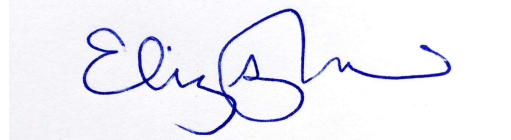
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

In this case, claimant and the staff at Jeld-Wen had a conversation and arranged for her to take a leave of absence in order to keep her safe from the emerging pandemic prior to her surgery. This was certainly a reasonable step for claimant to take, given her health history. However, a person cannot voluntarily remove herself from the workforce and remain eligible for **regular unemployment insurance benefits**. The administrative law judge finds claimant was on a voluntary leave of absence and unavailable for work from March 22, 2020, through August 1, 2020. Benefits are withheld for those weeks.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The July 7, 2020 (reference 07) unemployment insurance decision is modified with no change in effect. Claimant was on a voluntary leave of absence and was unavailable for work from March 22, 2020, through August 1, 2020. Benefits are withheld for those weeks.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 8, 2021
Decision Dated and Mailed

lj/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**