

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOBBI J HEHLKE
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-03847-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On May 8, 2020, the claimant filed an appeal from the March 19, 2020, (reference 02) unemployment insurance decision that denied benefits effective February 23, 2020. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2020. Claimant participated. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 26, 2019, employer hired claimant as a part-time kitchen assistant. Employer did not guarantee claimant a certain number of hours per week.

In December 2019, claimant's hours were decreased. Claimant reopened a claim for unemployment insurance benefits that she already had on file. The claim had an effective date of February 17, 2019.

On February 16, 2020, the claim year expired. Claimant was instructed by an Iowa Workforce Development representative to file a new claim. Claimant filed a new claim with an effective date of February 23, 2020. Employer protested the claim. On March 18, 2020, claimant and employer had a fact finding interview.

On March 19, 2020, Iowa Workforce Development mailed a reference 02 unemployment insurance decision denying benefits to claimant's last address of record. The decision warned that an appeal was due by March 29, 2020. Claimant did not receive the decision and did not realize she had been denied benefits. Claimant continued to file her weekly continued claims.

Claimant had a kidney transplant and her immune system is compromised. At the end of March 2020, the COVID 19 virus began spreading around the United States. Employer gathered all employees with underlying health conditions and advised them that unpaid leave was available, should they choose to take it. Claimant decided to take the leave as her medical provider advised her to self-quarantine.

Claimant contacted Iowa Workforce Development and was told that she could file a claim for unemployment insurance benefits and indicate that she was filing due to COVID 19. Claimant did so, but did not realize the March 19, 2020, decision had been issued and was preventing her from receiving benefits.

Claimant continued to email back and forth with Iowa Workforce Development and received extremely confusing and contradictory advice on the status of her claim.

Finally, on May 8, 2020, an employee of the Iowa Workforce Development Appeals Bureau notified claimant of the reference 02 decision and that she had a right to file an appeal. Claimant did so the same day.

Claimant was off work on approved medical leave from April 1, 2020, until she returned to work on May 14, 2020.

Claimant has been working part-time hours since May 14, 2020.

The Benefits Bureau of Iowa Workforce Development has detected that a new fact finding interview should be scheduled for claimant, but has not done so as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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, in pertinent part:

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.

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

The next issue is whether claimant is eligible for benefits.

Iowa Code section 96.19(38) provides:

"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.

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 96.19, 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(26) provides:

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

(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.

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.

From February 23, 2020, until April 1, 2020, claimant was still employed at the same hours and wages as agreed upon at the time of hire and is not considered unemployed and is not eligible for benefits.

From April 1, 2020, through May 14, 2020, claimant was totally unemployed, but unavailable for work. Claimant was unavailable for work due to an underlying medical condition and the fact that her medical provider directed her to self-quarantine. Employer approved a leave of absence for that time period. Claimant was not available for work and not eligible for regular, state funded unemployment insurance benefits during that time period.

Even though claimant is not eligible for regular unemployment insurance benefits under state law while she was on leave, claimant is likely eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136 for that time period. 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. Claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

Again, from May 14, 2020, going forward, claimant is not eligible for unemployment insurance benefits as she is still employed at the same hours and wages as agreed upon at the time of hire during that time period and is not considered unemployed.

DECISION:

The March 19, 2020, (reference 02) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not able to work and available for work effective February 23, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied.



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

May 29, 2020
Decision Dated and Mailed

cal/scn

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 currently or were 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>.