

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISMAIL ERDEM
Claimant

QUEST LINER INC
Employer

APPEAL 20A-UI-06220-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code section 96.4(3) – Able to and Available for Work
Iowa Administrative Code rule 871-24.23(10) – Able to and Available for Work
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 15, 2020, the claimant, Ismail Erdem, appealed the May 20, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding claimant voluntarily quit his job with Quest Liner, Inc. (Quest Liner) without good cause attributable to the employer. The agency properly notified the parties of the hearing.

The undersigned presided over a telephone hearing on July 16, 2020. Nilcan Sakya served as the interpreter. Erdem participated personally and testified. His wife, Selin Ozburdak Erdem, also testified. Quest Liner participated through Larry Rochau, who testified.

ISSUES:

Was Erdem's appeal timely?

Is Erdem able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Quest Liner hired Erdem as a part time company driver on July 20, 2018. He was still employed with Quest Liner at the time of hearing. However, Erdem's last day worked was March 12, 2020.

Erdem and his wife, Ozburdak Erdem, live on campus at Maharishi International University, which is in a different county from the one in which the Quest Liner facility at which Erdem works is located. Ozburdak Erdem is an assistant vice president of enrollment and student affairs. Ozburdak Erdem also serves on the university's COVID-19 task force.

The university has taken the COVID-19 pandemic seriously. It requires students arriving from outside the county to quarantine for fourteen days. The university has also issued a policy requiring all individuals who reside on campus to remain within the county during the pandemic outbreak. The university's quarantine policy for campus residents has prevented Erdem from going to work.

Erdem timely notified Quest Liner of his situation. Quest Liner has been understanding. Because he is able to do his work at will, Quest Liner has allowed him to obtain training online while the university's COVID-19 travel limitations are in effect. Quest Liner has work available for Erdem when he is able to return to work.

Erdem filed a claim for regular unemployment insurance benefits under state law. He also filed a claim for federal Pandemic Unemployment Assistance (PUA) under the CARES Act. An IWD employee advised Erdem to wait to appeal the denial of his claim for regular unemployment insurance benefits under state law until after he received his PUA determination. Erdem acted on this information and did not appeal.

Subsequently, another IWD worker told Erdem that he should appeal because it would take a long time to get a determination on his PUA application. Erdem followed this advice and filed an appeal. His appeal was received more than ten days after the representative's unemployment decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes:

- 1) Erdem's appeal is timely because he acted reasonably in response to communication with the agency; and
- 2) Erdem is not eligible for benefits because he is currently in a voluntary period of unemployment in the form of a leave of absence.

Timeliness of Appeal

Iowa Code section 96.6(2) requires a party to file an appeal within ten days of the IWD representative's decision. Iowa Administrative Code rule 871-24.35(2) states:

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 division 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.

(emphasis added)

Here, Erdem applied for regular unemployment insurance benefits under state law as well as Pandemic Unemployment Assistance (PUA) under the federal CARES Act. After receiving the IWD representative's decision finding him ineligible for regular unemployment insurance benefits, an IWD worker suggested he wait to appeal until after getting his PUA determination from the agency. Erdem acted on this incorrect advice and ten days passed. Then another IWD employee instructed Erdem to appeal because it would take a long time to get a PUA determination from the agency. He then filed an appeal.

For these reasons, the evidence establishes Erdem reasonably acted on advice from IWD staff that was incorrect. One IWD worker gave him incorrect advice. He acted on it. Then another told him not to wait and file an appeal. Erdem acted on that advice as well. Erdem's appeal of the decision dated May 20, 2020 (reference 01) is timely.

Regular Unemployment Insurance Benefits Under State Law

Under Iowa Code section 96.4(3), a claimant must be able to and available for work in order to be eligible for benefits. Iowa Administrative Code rules 871-24.23(10) states that a claimant is disqualified from benefits for being unavailable for work if the claimant requested and was granted a leave of absence. Under the rule, the leave is deemed to be a period of voluntary unemployment. The claimant has the burden of proof in establishing his ability and availability for work. See *Davoren v. Iowa Employment Security Comm'm*, 277 N.W.2d 602 (Iowa 1979).

Here, the parties agree that Erdem has been unavailable to work because the Maharishi International University has forbidden individuals who live on its campus, such as Erdem and his wife, from leaving the county because of COVID-19. Erdem informed Quest Liner of his inability to leave the county. Quest Liner has accommodated this quarantine by granting Erdem what amounts to a leave of absence. For these reasons, Erdem is in a period of voluntary unemployment and ineligible for regular unemployment insurance benefits under state law.

It appears that Erdem has applied for PUA under the CARES Act. According to the U.S. Department of Labor, PUA provides for up to 39 weeks of benefits to qualifying individuals who are unable or unavailable to work due to one or more COVID-19 related reasons such as:

The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency
[. . .]

U.S. Dep't of Labor, Unemployment Ins. Program Letter 16-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions," p. 3 (Apr. 5, 2020), available online

at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_acc.pdf (last viewed July 16, 2020).

This decision does not address whether Erdem might be eligible for PUA under the CARES Act.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The May 20, 2020 (reference 01) unemployment insurance decision is affirmed. Erdem voluntarily left his employment without good cause attributable to Quest Liner. Benefits are withheld until such time as Erdem has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Erdem is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 is eligible for such compensation for the week claimed. This decision does not address whether Erdem is eligible for PUA. For a decision on such eligibility, he must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Ben Humphrey
Administrative Law Judge

July 24, 2020
Decision Dated and Mailed

bh/sam

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 about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>