

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL SAVAGE

Claimant

APPEAL 21A-UI-13970-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY

Employer

OC: 03/28/21

Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.22(2)i – On-Call Workers

STATEMENT OF THE CASE:

Crystal Savage, the claimant/appellant, filed an appeal from the June 3, 2021, (reference 01) unemployment insurance decision that denied REGULAR unemployment insurance (UI) benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2021. Ms. Savage participated and testified. The employer participated through Russ Stratton, human resources and Gilda Smolka, hearing representative from Equifax. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Savage's appeal filed on time?
Is Ms. Savage partially unemployed and able to and available for work?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Savage at the correct address on June 3, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by June 13, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. June 13, 2021 was a Sunday; therefore, the deadline was extended to Monday, June 14, 2021.

Ms. Savage received the decision in the mail the evening of June 14, 2021. She had worked 10 hours that day. She was confused about the decision, and IWD was already closed for the day. She called IWD the morning of June 15, 2021. Ms. Savage filed an appeal online on June 15, 2021 at 9:39 a.m. The appeal was received by Iowa Workforce Development on June 15, 2021.

The administrative law judge further finds that Ms. Savage began working for the employer, a base period employer, on November 15, 2017. She works as an as-needed physical therapist. However, since her hire date she has consistently worked a full day every Tuesday and every Thursday, plus any additional hours when she is needed. She is paid \$42.84 per hour. As of March 28, 2021, the effective date of Ms. Savage's claim, the employer has stopped offering her hours because of the COVID-19 pandemic. Ms. Savage has stayed in touch with her point of contact who has told her that work may be available in September 2021.

Ms. Savage also works for employer Mary Greeley Medical Center, another base period employer. She works as an as-needed physical therapist. She usually works at this job on Mondays and Wednesdays plus any additional hours when she is needed. She is paid about \$48.00 per hour. As of March 28, 2021, the effective date of Ms. Savage's claim, Mary Greeley was not offering Ms. Savage hours because of the COVID-19 pandemic. Mary Greeley began offering, and Ms. Savage accepted, hours again beginning the week of May 9-15, 2021. Ms. Savage's weekly benefit amount is \$493.00. Ms. Savage's hours at Mary Greeley have increased and she has earned at least \$508.00 (\$93.00 + \$15.00) per week as of June 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Ms. Savage's appeal was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. 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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Savage received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Savage received the decision the evening of June 14, 2021 and made a reasonable and timely effort to understand what it meant and what her options were by calling IWD the next morning. She filed her appeal that same morning. Ms. Savage has established good cause for her delay. The appeal was filed on time.

The administrative law judge further concludes that Ms. Savage is totally unemployed from March 28, 2021 through May 8, 2021 and she is partially unemployed from May 9, 2021 through June 5, 2021.

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 Code § 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 Admin. Code r. 871-24.22(2)(i) provides:

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.

i. On-call workers

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38) "a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.23 (26) provide:

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 Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Ms. Savage is totally unemployed from March 28, 2021 through May 8, 2021 since no wages were payable to her and she did not perform at services during time. Although, Ms. Savage is classified as as-needed with this employer, based on the pattern of her employment since hire, she has a steady schedule of work, which the employer interrupted by not offering her work. Benefits are allowed for these weeks, as long as Ms. Savage is otherwise eligible.

Ms. Savage is partially unemployed from May 9, 2021 through June 5, 2021. The employer reduced her hours due to the COVID-19 pandemic. Ms. Savage has other base-period wages. Partial benefits are allowed for these weeks, as long as Ms. Savage is otherwise eligible.

The employer continuously offered Ms. Savage the same wages but reduced her hours because the COVID-19 pandemic led to less available work. Although the employer was not offering Ms. Savage the same employment at the time she was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account from March 28, 2021 through June 5, 2021. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment if the claim was filed before June 12, 2021. Ms. Savage's claim was filed effective March 28, 2021.

DECISION:

Ms. Savage's appeal was filed on time. The June 3, 2021, (reference 01) unemployment insurance decision denying benefits is modified in favor of the appellant, Ms. Savage. Ms. Savage is totally unemployed from March 28, 2021 through May 8, 2021 and she is partially unemployed from May 9, 2021 through June 5, 2021. Benefits are allowed for these weeks.

This employer is relieved of benefit charges from March 28, 2021 through June 5, 2021.



Daniel Zeno
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August 18, 2021
Decision Dated and Mailed

dz/scn