

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRENTTON M ALDERMAN**  
Claimant

**KINSETH HOTEL CORPORATION**  
Employer

**APPEAL 21A-UI-25660-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/27/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On November 20, 2021, the claimant/appellant filed an appeal from the February 16, 2021, (reference 04) unemployment insurance decision that denied benefits based on claimant requesting a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2022. The hearing was held together with appeals 21A-UI-25661-CS-T and 21A-UI-25662-CS-T and combined into one record. Claimant participated in the hearing. Employer participated through hearing representative Tom Durso. General Manager Cheri Torrence was present as a witness for the employer. Exhibit A was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUES:**

Is claimant's appeal timely?  
Is the claimant able to work and available for work?  
Is the claimant on an approved leave of absence?  
Does the claimant meet the definition of being considered partially, totally, temporarily unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on February 16, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated November 11, 2021. The appeal was sent within ten days after receipt of that decision.

Claimant began working for employer on July 14, 2020. Claimant last worked as a housekeeper and in maintenance.

Claimant became ill on December 26, 2020. Claimant tested positive for COVID on December 28, 2020. (Exhibit A). Claimant was absent from work from December 28, 2020 through January 6, 2021. Claimant had symptoms of COVID that included body pain, weakness, and he had a hard time walking. Claimant was not able to work from December 26, 2020, through January 6, 2021.

The employer had a policy that required employees to mandatorily quarantine if they tested positive for COVID. Employees were required to quarantine for fourteen days.

Claimant returned to work on January 7, 2021. Claimant has applied for Pandemic Unemployment Assistance (PUA) and has been approved for benefits. It is unclear if claimant has received the PUA benefits.

## **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 section 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, subsections 10 and 11, 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.

The appellant 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.

The next issue is whether the claimant is able to work and available for work. The administrative law judge concludes claimant was not able to work and available for work effective December 27, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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 became ill and tested positive for COVID. Claimant testified that his symptoms were severe and he was not able to work due to the pain and weakness he was experiencing. Claimant was required to mandatorily quarantine due to his employer, however, claimant could not work during this time period because of his severe symptoms he was experiencing due to his illness. Since claimant was ill and not able to perform work due to his illness he is disqualified from benefits beginning December 27, 2020 through January 6, 2021.

The issue of whether claimant was totally, partially or temporarily unemployed is moot since claimant was not able to work or available for work.

#### **DECISION:**

Claimant's appeal is timely.

The February 16, 2021, (reference 04) unemployment insurance decision is affirmed. The claimant is not available for work effective December 27, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.

The issue of whether claimant was totally, partially or temporarily unemployed is moot since claimant was not able to work or available for work due to his illness.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 9, 2022  
Decision Dated and Mailed

cs/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 were unemployed between February 2, 2020, and June 12, 2021, 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is 125660 (this is the pin number you used for the hearing).**

If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.