

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ASHLEY MCELHENNY**  
Claimant

**APPEAL 21A-UI-19035-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATHOLIC HEALTH INITIATIVEIS IOWA**  
Employer

**OC: 04/19/20**  
**Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal  
Iowa Code §96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Ashley McElhenny, the claimant/appellant, filed an appeal from the October 9, 2020, (reference 02) unemployment insurance (UI) decision that denied benefits as of April 19, 2020 because Ms. McElhenny did not have childcare and could not attend work. The parties were properly notified of the hearing. A telephone hearing was held on October 21, 2021. Ms. McElhenny participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. McElhennys' appeal filed on time?  
Is Ms. McElhenny able and available for work?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. McElhenny at the correct address on October 9, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 19, 2020.

Ms. McElhenny did not receive the decision in the mail. IWD issued five additional decisions – one, dated December 23, 2020, (reference 03), denying benefits based on a voluntary quit from this employer, and four decisions, all dated August 20, 2021, finding Ms. McElhenny was overpaid REGULAR UI benefits (reference 04), Pandemic Emergency Unemployment Compensation (PEUC) benefits (reference 05), Federal Pandemic Unemployment Compensation (FPUC) benefits (reference 06), and Lost Wage Assistance Payments (LWAP) benefits (reference 07). Ms. McElhenny received at least one of those decisions. Ms. McElhenny contacted IWD and asked about her eligibility for benefits. The representative told her about the reference 02 and reference 03 decision and mailed a copy of those decisions to Ms. McElhenny. Ms. McElhenny filed an appeal online on August 27, 2021. The appeal was received by Iowa Workforce Development on August 27, 2021.

The administrative law judge further finds: Ms. McElhenny began working for the employer in October 2019. She worked as a full-time phlebotomist.

Ms. McElhenny took a 30-day leave of absence from April 19, 2020 through May 19, 2020 because her children's schools closed and no one was available to care for her children. The employer told Ms. McElhenny that if she did not return to work on Wednesday, May 20, the employer would consider her to have quit. Ms. McElhenny was not able to return to work on May 20. She was able to return to work on Monday, May 25. Ms. McElhenny found coverage for her scheduled shifts from May 20 through Friday, May 22. Ms. McElhenny told the employer that she could not return to work until May 25, but that she had found coverage for scheduled shifts. The employer disapproved Ms. McElhenny's request to have other employees cover her shift and told her that if she did not return to work on May 20 the employer will consider her to have voluntarily quit. Ms. McElhenny could not, and did not, attend work from May 20 through May 22 because she had to care for her children.

Ms. McElhenny called the employer on Monday, May 25 to ask about returning to work. The employer told Ms. McElhenny that she had quit so her employment was over. Ms. McElhenny told the employer that she did not quit; she just could not return to work on May 20.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. McElhenny's appeal of the reference 02 decision 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. McElhenny did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When Ms. McElhenny learned that she had been denied benefits, she appealed. Ms. McElhenny's appeal was filed on time.

The administrative law judge further concludes: Ms. McElhenny was not available for work from April 19, 2020 through May 22, 2020.

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. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *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.

Iowa Admin. Code r. 871-24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Ms. McElhenny was unavailable for work from April 19, 2020 through May 22, 2020 due to lack of childcare. Ms. McElhenny did what she needed to do for her family. However, she was not available for work. As such REGULAR, state-funded, unemployment insurance benefits are denied April 19, 2020 through May 22, 2020.

Even though Ms. McElhenny is not eligible for regular unemployment insurance benefits under state law April 19, 2020 through May 22, 2020, she 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

up to the \$600.00 weekly benefit amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

**DECISION:**

Ms. McElhenny's appeal was filed on time. The October 9, 2020 (reference 02) decision is affirmed. Ms. McElhenny is not available for work from April 19, 2020 through May 22, 2020. Benefits are denied during these weeks.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
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Fax 515-478-3528

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November 02, 2021  
Decision Dated and Mailed

dz/ol

**NOTE TO MS. MCELHENNY:**

- 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 you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits 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.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on April 19, 2020.