

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOUIS BODENHOFER
Claimant

KLOECKNER METALS
Employer

APPEAL 21A-UI-25519-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 18, 2021, the claimant/appellant filed an appeal from the January 14, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant requesting and granted a leave of absence. Benefits were denied as of November 8, 2020. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2022. The hearing was held together with appeal 21A-UI-25520-CS-T and combined into one record. Claimant participated at the hearing. Employer participated through Lori Bahl. Administrative notice was taken of claimant's unemployment insurance benefits.

ISSUES:

Is claimant's appeal timely?

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

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 January 14, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated November 12, 2021. The appeal was sent within ten days after receipt of that decision.

Claimant began working for employer on June 21, 1993. Claimant is still employed with employer as a crane operator.

On November 11, 2020, claimant became ill and called into work. Claimant tested positive for COVID. Claimant lost his sense of smell and taste, had a fever, body aches and pain.

The employer had a policy that required employees that tested positive for COVID to mandatorily quarantine for 14 days. Claimant could not work from November 11, 2020, through November 24, 2020, due to his symptoms. Claimant returned to work on November 25, 2020.

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. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able to work and available for work and whether he was on a leave of absence. The administrative law judge concludes claimant was not able to work.

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 871. 24.22(2) 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.

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

j. Leave of absence. A leave of ***absence negotiated with the consent of both parties***, employer and employee, ***is deemed a period of voluntary unemployment for the employee-individual***, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(Emphasis added).

Iowa Admin. Code r. 871-24.23(1) provides:

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.

Here, claimant was put on a mandatory leave of absence between November 11, 2020, and November 24, 2020. The claimant testified he was ill and could not work during this time period

due to his illness. Since claimant was ill and not available to perform work due to his illness he is disqualified from state unemployment benefits from November 11, 2020, through November 24, 2020.

Claimant is urged to immediately file for Pandemic Unemployment Assistance (PUA) to see if he qualified for benefits. Instructions for filing for PUA benefits is listed under the "note to claimant" listed below.

DECISION:

The claimant's appeal is timely.

The January 14, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work November 11, 2020, through November 24, 2020. Benefits are denied beginning November 11, 2020.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 9, 2022
Decision Dated and Mailed

cs/mh

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 125519 (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.