

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JERYLANN D SANDERS**  
Claimant

**PILOT TRAVEL CENTERS LLC**  
Employer

**APPEAL 20A-UI-12751-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications  
Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

On October 15, 2020, the claimant filed an appeal from the June 12, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2020. Claimant participated. Employer participated through general manager William Hook. Department Exhibit 1 was received. Claimant's Exhibits A and B were admitted into the record.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to and available for work?  
Is the claimant on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 12, 2020, Iowa Workforce Development (IWD) mailed a reference 01 unemployment insurance decision that denied unemployment insurance benefits to claimant's last address of record. The decision warned an appeal was due by June 22, 2020. Claimant did not receive the decision. In July 2020, claimant noticed she was no longer receiving payments on her debit card. Claimant called Iowa Workforce Development and spoke with a customer service representative. Claimant was told it was too late to appeal the decision, but that she could apply for Pandemic Unemployment Assistance (PUA). Claimant did so. When claimant's application for PUA benefits was denied, claimant called IWD again and was told that she could still try to appeal the reference 01 decision. Claimant did so the same day.

Claimant started working for employer in May 2018. Claimant last worked as a full-time guest service leader.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Claimant has elementary-aged children. Governor Kim Reynolds cancelled in

person classes for K-12 schools for what would eventually be the remainder of the school year. Although claimant had daycare for her children, she did not feel it was safe. Employer granted her a leave of absence from April 13, 2020, through May 25, 2020.

On May 22, 2020, claimant followed up with employer to request additional leave. Claimant's manager notified her that she was approved for an additional six weeks of leave. On May 28, 2020, claimant notified employer it would be another two weeks until her children could be back in daycare. However, on May 28, 2020, employer terminated claimant's employment.

### **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 § 96.6(2) provides, in pertinent part:

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. . . . 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.

The claimant did not have an opportunity to timely 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's tardiness in filing the appeal was compounded by the fact that she received bad advice from an IWD customer service representative. The claimant filed an appeal as soon as she was advised of her appeal rights. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 12, 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. 871-24.23(10) provides:

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

(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.

Here, claimant was on a leave of absence to protect herself and her family from COVID 19. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

The issue of whether claimant is qualified for benefits based on her separation from employment on May 28, 2020, and was available for work after that date has not yet been decided by the Benefits Bureau of Iowa Workforce Development. That issue will be remanded for an initial decision.

**DECISION:**

The June 12, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. Claimant was not able to and available for work from April 12, 2020, through May 28, 2020, because she was on an approved leave of absence. Benefits are denied during that time period.

**REMAND:**

The issues of whether claimant is disqualified from receiving unemployment insurance benefits based on her May 28, 2020, separation from employment and whether she was able to and available for work and eligible for benefits after that date are remanded to the Benefits Bureau of Iowa Workforce Development for an initial decision.



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Christine A. Louis  
Administrative Law Judge  
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December 28, 2020  
Decision Dated and Mailed

cal/scn