

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH M ERLBACHER
Claimant

APPEAL 20A-UI-14941-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On November 6, 2020, the claimant filed an appeal from the July 1, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 20, 2021. Claimant participated. Employer did not register for the hearing and did not participate. Claimant's Exhibits A and B were entered into the record. Department Exhibit 1 was entered into the record.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 1, 2020, Iowa Workforce Development (IWD) mailed reference 01 and 02 unemployment insurance decisions to claimant's last address of record. The decisions denied regular unemployment insurance benefits. Claimant did not receive the decisions.

On October 29, 2020, IWD mailed a reference 03 decision to claimant. The decision found claimant overpaid unemployment insurance benefits. Claimant timely appealed the decision.

Claimant began employment with employer in fall 2019 as a part-time tutor. During spring 2020, claimant and employer agreed claimant would work four hours per week.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. Claimant continued to work for this employer, but also had a second part-time job with Pals for Paws. Claimant had reduced hours with Pals for Paws and was eventually laid off. Claimant is monetarily eligible for unemployment insurance benefits based on her wages with Pals for Paws.

Claimant let employer know she would not be staying on for the summer as she was beginning graduate school in mid-August. Claimant's last day working for employer was May 7, 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 § 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 timely appealed the overpayment decision, which was the first notice of disqualification. The appeal is considered timely.

The next issue is whether claimant was partially or totally unemployed, and therefore eligible for benefits.

Iowa Code section 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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Because the claimant has other base-period wages and remained employed part-time with this employer, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer offered the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The July 1, 2020, (reference 01) unemployment insurance decision is modified in favor of the claimant. The appeal is timely. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of the current part-time employer University of Iowa (account number 068884) shall not be charged.



Christine A. Louis
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February 5, 2021
Decision Dated and Mailed

cal/scn