

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERLIN J KALAR
Claimant

CTB MIDWEST INC
Employer

APPEAL 22A-UI-03752-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant, Merlin J Kalar, filed an appeal from the March 8, 2021 (reference 01) unemployment insurance decision that denied benefits concluding that he was receiving the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2022, at 1:00 p.m. The hearing was held jointly with appeal 22A-UI-03754-SN-T and 22A-UI-03757-SN-T. The claimant participated. The employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether the claimant's appeal is timely? Whether there are reasonable grounds to find his appeal otherwise timely?
Whether claimant is totally, partially or temporarily unemployed?
Whether claimant is able to and available for work?
Whether claimant is still employed at the same hours and wages?
Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer, CTB Midwest Inc., as a full-time laser operator in 2004. The claimant's regular full-time schedule is 40 hours per week. His hourly wage is \$22.00.

The claimant filed an initial claim for unemployment insurance benefits effective May 31, 2020. Claimant's weekly benefit amount is \$481.00. For the week of May 31, 2020, the employer shut the plant down. The claimant earned \$176.00 that week due to the Memorial Day holiday.

The claimant returned to work at his regular hours the following week ending June 6, 2020. The claimant filed weekly claims for the weeks ending June 6, 2020, June 13, 2020, and June 20, 2020. The administrative record KCCO shows the claimant reported earning \$180.00 for the week ending June 6, 2020. However, the claimant acknowledged during the hearing that he misreported what he had been paid for the previous week rather than what he earned that week. The claimant reported earning \$1,916.00 for the weeks ending June 13, 2020 and June 20, 2020.

The following section of the findings of fact describe the facts necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record on March 8, 2021. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was the Federal Pandemic Unemployment Compensation (FPUC) overpayment decision dated January 17, 2022, reference 04. The claimant received this decision on January 26, 2022. The claimant appealed on January 28, 2022. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant'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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 claimant 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the FPUC overpayment decision within 10 days from the date he received it. The claimant has shown there were reasonable grounds to find his appeal otherwise timely.

For the reasons that follow, the administrative law judge concludes claimant was not partially unemployed for the weeks he made his weekly claims. Benefits are denied.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code section 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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 Admin. R. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) 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.

To be partially unemployed for any given week, claimant must work less than 40 hours per week (claimant's regular full-time schedule) and earn less than \$496.00 (claimant's weekly benefit plus \$15). The claimant earned in excess of his amount for the three weeks he made his weekly claims on June 6, 2020, June 13, 2020 and June 20, 2020.

Iowa Code section 96.4(2) provides:

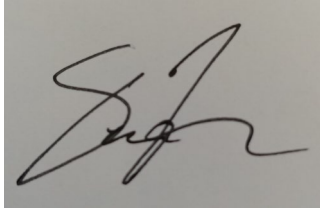
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

2. The individual has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

The claimant seeks compensation for the week preceding his first weekly claim. Unfortunately, the claimant filed his original claim too late for that week. The claimant is required to make a weekly claim for each week he is seeking benefits. See Iowa Code section 96.4(2).

DECISION:

The March 8, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was not unemployed for the weeks he made weekly claims. He did not file a weekly claim for the week that he was partially unemployed. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 11, 2022
Decision Dated and Mailed

smn/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 reference number is 103752, 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.