

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OPHELIA CHEAYEE
Claimant

ABM LTD
Employer

APPEAL 18A-UI-01885-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/15/17
Claimant: APPELLANT (4)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2017, (reference 01) unemployment insurance decision that denied benefits effective October 15, 2017 finding the claimant was not able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 7, 2018. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted into the record.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant went on a leave of absence effective October 15, 2017 to undergo surgery. She notified the employer before she left and requested a leave of absence. She filed for unemployment insurance benefits with an effective date of October 15, 2017. When she received the decision denying benefits she went to her local office and was told that as long as she was on medical leave she would not be eligible for benefits. Claimant did not understand that she had to file an appeal based upon what she was told by her local office employees.

The claimant received a note from her treating physician dated December 18, 2017 that released her to return to work without any work restrictions effective January 8, 2018. On December 20, she provided a copy of the note to her employer and then on January 8, she called the employer to request additional work assignments. The claimant was told that her employer had eliminated her job as she had been off work longer than twelve weeks.

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 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 claimant did not have an opportunity to appeal the fact-finder's decision because the employees of the local office told her that she was not eligible for any benefits as long as she was on medical leave. The claimant did not understand that she was required to appeal the decision to preserve her rights. Under these circumstances the administrative law judge finds the claimant's appeal timely.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective January 8, 2018.

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(2) 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.

(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.

Claimant has no medical restriction or other limitation on her employability effective January 8, 2018. The employer did not hold the claimant's job open for her while she was off on medical leave. Accordingly, benefits are allowed, effective January 8, 2018, provided the claimant is otherwise eligible. .

DECISION:

The November 2, 2017, (reference 01) decision is modified in favor of the appellant. The claimant's appeal is timely. The claimant is not able to work and available for work from October 15, 2017 through January 7, 2018. Claimant is able to work and available for work effective January 8, 2018, and benefits are allowed as of that date.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs