

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TABITHA L JAEGER
Claimant

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

**APPEAL 20A-UI-15663-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 4, 2020, Tabitha Jaeger (claimant/appellant) filed an appeal from the May 13, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 based on a finding claimant was still employed for the same wage and hours and therefore not partially unemployed.

A telephone hearing was held on January 27, 2021. The parties were properly notified of the hearing. Claimant participated personally. Her husband, Greg Jaeger, participated as a witness. Dubuque Community School District (employer/respondent) participated by Payroll Specialist Mindy Klein.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. 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?

FINDINGS OF FACT:

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

Claimant worked for employer as a substitute teacher. She began in this role in 2012. In this role, substitute teaching positions were offered as they became available and claimant was free to accept or reject them. Claimant most recently accepted a long-term substitute teaching position for a teacher who was on maternity leave, beginning February 28, 2020. That position was initially slated to continue into May 2020. However, due to the school closing on March 22, 2020 because of the pandemic, the end date was adjusted to April 20, 2020. Claimant was ultimately paid through that date, although it was not initially clear that would occur.

No substitute teaching positions were available to claimant after April 20, 2020, due to the school closing. The term ended June 6, 2020. Claimant filed a weekly claim for benefits each week from the benefit week ending March 21, 2020 and continuing through the benefit week ending June 6, 2020. Claimant's base period consists entirely of substitute teaching work. There was no work available the week ending March 21, 2020, as that was spring break.

The Unemployment Insurance Decision was mailed to claimant at the above address on or about May 13, 2020. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 23, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision online on November 4, 2020.

Claimant did not appeal the decision when she first received it because she agreed she should not be eligible for benefits from that date and continuing until April 20, 2020. This is because when claimant initially filed, she did not know that employer was going to continue paying her through April 20, 2020 even though she was no longer performing work for it after the school closed.

However, claimant did believe she was eligible for benefits from April 20 and continuing to the end of the school term on June 3, 2020. It was not clear to claimant until she received an overpayment decision in late October 2020 that the May 13, 2020 decision denied benefits for that period as well. She appealed shortly thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The May 13, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 is AFFIRMED.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

Claimant did not appeal the decision when she first received it because she agreed she should not be eligible for benefits from that date and continuing until April 20, 2020. This is because when claimant initially filed, she did not know that employer was going to continue paying her through April 20, 2020 even though she was no longer performing work for it after the school closed.

However, claimant did believe she was eligible for benefits from April 20 and continuing to the end of the school term on June 3, 2020. It was not clear to claimant until she received an

The administrative law judge finds the appeal is timely. Claimant's confusion with the May 13, 2020 decision is understandable in the circumstances. While claimant would have been well-advised to have appealed the decision and/or sought clarity at the time she received it, she did appeal when she received the overpayment decision in late October 2020 and it became clear to her that the May 13, 2020 decision covered the period following April 20, 2020 as well as the period prior to it.

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 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 Admin. Code r. 871-24.22(2)(3) 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...

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Claimant worked for employer as a substitute teacher. During the weeks claimant filed for benefits, she was still employed as a substitute teacher: that is, substitute teaching positions were offered as they became available and claimant was free to accept or reject them. There were no substitute teaching positions available after the school closed in mid-March 2020.

However, that was not a change in the contract of hire. That is the nature of substitute teaching and other on-call employment. Furthermore, because claimant's base period consists entirely of substitute teaching work, she cannot be considered totally or partially unemployed or available for work under applicable law. For these reasons, she is not eligible for benefits.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The May 13, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 15, 2020 is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 11, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.