

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**JORDYN DORMAN**

Claimant

**ALPHABET SOUP ENTERPRISES LLC**

Employer

**APPEAL 23A-UI-03910-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/05/23**

**Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Alphabet Soup Enterprises LLC, the employer/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development April 3, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Dorman REGULAR (state) UI benefits as of March 5, 2023 because IWD concluded that she on a short-term layoff and able to and available for work during the layoff. The Iowa Department of Inspections and Appeals (DIA) UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Dorman. The undersigned administrative law judge held a telephone hearing on May 2, 2023. The employer participated through Angela Thrailkill, owner and director. Ms. Dorman participated personally. The undersigned took official notice of the administrative record and admitted Employer's Exhibits 1-3 as evidence.

**ISSUES:**

Did the employer file its appeal on time?

Is Ms. Dorman able to and available for work as of March 5, 2023?

Is Ms. Dorman partially or temporarily unemployed as of March 5, 2023?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the April 3, 2023, (reference 01) UI decision to the employer at the correct address on April 3, 2023. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by April 13, 2023.

The employer received the notice of the fact-finding interview after interview. After waiting about a week and not receiving a decision from IWD, Ms. Thrailkill emailed IWD on Saturday, April 8 asking for a copy of the decision. On Tuesday, April 11, IWD responded to Ms. Thrailkill via email and let her know that IWD remailed a copy of the decision to the employer. The employer received the decision on April 14, 2023 with a United States Postal Service postmark date of April 12, 2023. The employer filed its appeal online on April 14, 2023. The DIA UI Appeals Bureau received the appeal on April 14, 2023.

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<sup>1</sup> Appellant is the person or employer who filed the appeal.

The undersigned further finds: Ms. Dorman began working for the employer, a daycare and a base period employer, in June 2021. She worked as a full-time assistant teacher. Her schedule was set, and the employer paid her \$12.25 per hour. Ms. Dorman filed her initial UI claim effective March 5, 2023. IWD set his weekly UI claim amount at \$250.00.

Ms. Dorman went on approved, unpaid maternity leave as of December 31, 2022. Ms. Dorman was scheduled to return to work on February 27, 2023, or eight weeks later. Ms. Dorman gave birth after her due date and let the employer know the same. The employer changed Ms. Dorman's return-to-work date to March 13, 2023 so Ms. Dorman could have eight weeks of leave after giving birth.

On February 22, Ms. Thrailkill sent Ms. Dorman an email stating that she anticipated that Ms. Dorman would return to work on March 13 and asking Ms. Dorman for a proposed work schedule for when she returned to work. Ms. Dorman responded that same day and stated that she had a doctor's appointment on March 20, and she did not know if Ms. Thrailkill wanted her to wait until after the doctor's appointment to return to work. Ms. Dorman also proposed working part-time in the mornings "for a little bit, and she asked Ms. Thrailkill about option for nursing her new baby."<sup>2</sup> Ms. Dorman and the employer planned for Ms. Dorman's new baby to attend the employer's daycare. Ms. Dorman's other child also attended the employer's daycare.

About a week-and-a-half later, on March 6, Ms. Thrailkill responded to Ms. Dorman's February 22 email. Ms. Thrailkill told Ms. Dorman that the employer would need a doctor's note releasing her to return to work and Ms. Thrailkill preferred that Ms. Dorman work 30 hours per week. Ms. Thrailkill also asked Ms. Dorman for details about Ms. Dorman's proposal to work part-time in the mornings, and whether Ms. Dorman had transportation to get to and from work. Ms. Dorman responded the next day, March 7, and proposed working from about 8:00 a.m. through about noon, Monday – Friday. Ms. Dorman also stated that she did not have transportation to get to and from work.

On March 9, Ms. Thrailkill emailed Ms. Dorman and offered Ms. Dorman a job as a cook, working 8:00 a.m. – 1:30 p.m., as an accommodation based on Ms. Dorman's return-to-work request. Ms. Thrailkill stated that the cook job would give Ms. Dorman flexibility to nurse her new baby and allow the employer to maintain classroom ratios per state law. The next day, March 10, Ms. Dorman asked Ms. Thrailkill, via email, if her pay would change. Ms. Thrailkill emailed Ms. Dorman back about three hours later and explained how Ms. Dorman could get a pay increase. Ms. Thrailkill did not directly answer whether Ms. Dorman's pay would change if she took the cook job. About 15 minutes later, Ms. Dorman emailed Ms. Thrailkill back "That would be a dilemma as I am nursing and I have no one to watch my kids."<sup>3</sup> The next day, March 11, Ms. Thrailkill emailed Ms. Dorman asked Ms. Dorman to let Ms. Thrailkill know by Friday, March 17 what Ms. Dorman planned to do about returning to work. Ms. Dorman did not response to Ms. Thrailkill.

Ms. Dorman concluded that the cook job did not offer enough hours/pay to justify her returning to work in that position. Ms. Dorman filed an initial UI claim sometime between March 9 and 11. The effective date of Ms. Dorman's claim is the Sunday of the week she filed her UI claim, Sunday, March 5.<sup>4</sup> Ms. Dorman attended her March 20 doctor's appointment, and her doctor released her to return to work that day. Ms. Dorman needs childcare to be able to attend work.

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<sup>2</sup> Employer's Exhibit 1.

<sup>3</sup> *Id.*

<sup>4</sup> Iowa Admin. Code r. 871-24.2(1)(h)(1). Effective starting date for the benefit year. Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

On March 23 and 29 and April 8, Ms. Dorman and Ms. Thrailkill texted each other about Ms. Dorman's children's items that were still at the employer's daycare. Ms. Dorman and the employer have not spoken otherwise. Ms. Dorman does not consider herself as an employee of the employer anymore and Ms. Thrailkill does not consider Ms. Dorman an employee of the employer anymore. IWD has not investigated or issued a decision on Ms. Dorman's eligibility for UI benefits based on how her job ended with this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes the employer filed its appeal of the April 3, 2023 (reference 01) UI decision on time.

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) provides:

2. 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:
  - (2) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
    - (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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.<sup>5</sup>

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<sup>5</sup> *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.<sup>6</sup>

The employer received the April 3, 2023 (reference 01) UI decision after the appeal deadline and, therefore, could not have filed an appeal by the deadline. The notice provision of the decision was invalid. The employer filed its appeal the day it received the decision. The employer filed its appeal on time.

The undersigned further concludes as follows:

Iowa Code § 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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 § 96.1A(37) 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.

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<sup>6</sup> *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Iowa Admin. Code r. 871-24.23(4), (8), (26) and (35) provide:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

(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 different from the contract for hire, such claimant cannot be considered partially unemployed.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.<sup>7</sup> To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."<sup>8</sup> "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."<sup>9</sup>

In this case, Ms. Dorman was not available to work from March 5, 2023, the effective date of her claim, through March 19, 2023 because her doctor had not released her to return to work. As of March 20, 2023, Ms. Dorman is not available to work because she needs childcare to be able to attend work and she does not have transportation to get to work. Since Ms. Dorman is not able to and available for work as of March 5, 2023, benefits are denied.

The issue of Ms. Dorman's eligibility for UI benefits based on how her job ended with this employer should be remanded (sent back) to the IWD Benefits Bureau for investigation and a decision.

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<sup>7</sup> Iowa Admin. Code r. 871-24.22.

<sup>8</sup> *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

<sup>9</sup> *Sierra* at 723.

**DECISION:**

The employer filed its appeal of the April 3, 2023 (reference 01) UI decision on time. The April 3, 2023 (reference 01) UI decision is REVERSED. Ms. Dorman is not able to and available for work as of March 5, 2023. Benefits are denied.

**REMAND:**

The issue of Ms. Dorman's eligibility for UI benefits based on how her job ended with this employer is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



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Daniel Zeno  
Administrative Law Judge

May 9, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

**1. Appeal to the Employment Appeal Board** within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

**2.** If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

**1. Apelar a la Junta de Apelaciones de Empleo** dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

**2.** Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.