

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLEEN M MCCARTY
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 21A-UI-21803-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (4)

Iowa Code § 96.19(38)a & b – 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 Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Coleen M. McCarty, filed an appeal from the November 6, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant is an on-call worker in her employment with the employer, Good Samaritan Society, Inc. The parties were properly notified of the hearing. A telephone hearing was held on November 29, 2021, and was consolidated with hearings for appeal numbers 21A-UI-21804-AR-T, 21A-UI-21807-AR-T, and 21A-UI-21810-AR-T. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as an interim administrator. She remains employed in this role as of the date of her hearing.

Claimant filed a claim for benefits with an effective date of July 12, 2020. Beginning that week, she was told by her then-supervisor, Laura Carmelik, that there was no work available for claimant. Carmelik attributed the lack of work available to claimant during this period to the

COVID-19 pandemic. Claimant filed weekly continuing claims and received benefit payments through the week ending August 8, 2020. She filed one additional weekly continuing claim the week ending August 15, 2020, but did not receive a benefit payment because she properly reported wages in excess of her weekly benefit amount, plus \$15.

The administrative record indicates that claimant is coded Group Code 8, which indicates that her unemployment was related to the COVID-19 pandemic.

A disqualification decision was mailed to claimant's last known address of record on November 6, 2020. Claimant did not receive the decision. The first notice she had of the decision was when she received later overpayment decisions. She called Iowa Workforce Development and was told to file an appeal if she disagreed.

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 section 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:

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 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. *Franklin v. Iowa Dep't of Job Serv.*, 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. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant 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 Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes:

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

Iowa Admin. Code r. 871—24.22(2)i(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Claimant testified that she is not an on-call worker, but is instead a full-time, salaried employee with the employer. Her WAGE-A records support this contention. Furthermore, the claimant's un rebutted testimony indicates that she did not work hours or earn wages during the weeks from July 12, 2020, through the week ending August 8, 2020. She was totally unemployed for those weeks and was told it was because of the COVID-19 pandemic and lack of work for her. Accordingly, claimant is totally unemployed between July 12, 2020, and August 8, 2020, she was able to and available for work, and benefits are allowed for that period. Claimant is listed as Group Code 8, which signifies that she was unemployed due to the COVID-19 pandemic. During the time of claimant's 2020 unemployment, the Agency had made the policy determination not to charge employers for unemployment insurance benefits paid to Group Code 8 claimants.

Beginning the week of August 9, 2020, claimant was no longer totally or partially unemployed. She had returned to work and earned wages in excess of her weekly benefit amount, plus \$15. Benefits are denied for the week of August 9, 2020.

DECISION:

The November 6, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant's appeal is timely. The claimant is totally unemployed from July 12, 2020, through the week ending August 8, 2020, and benefits are allowed for that period, provided she is otherwise eligible.

Benefits are denied for the week of August 9, 2020, because claimant was no longer totally or partially unemployed.



Alexis D. Rowe
Administrative Law Judge

January 5, 2022
Decision Dated and Mailed

ar/scn