

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA NELSON
Claimant

FRANK L OLSEN
Employer

APPEAL 22A-UI-01312-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 22, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective January 3, 2021, due to her being unable to work and unavailable for work. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2022. The claimant participated personally. Kyle Nelson participated as a witness for the claimant. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 22A-UI-01313-DB-T and 22A-UI-01314-DB-T.

ISSUES:

Was the appeal timely?
Was 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: A decision dated February 22, 2021 (reference 01) that found the claimant was not eligible for benefits was mailed to the claimant's address of record. Claimant never received the decision in the mail. Claimant filed an appeal on December 15, 2021 after receiving other decisions that had found she was overpaid benefits.

Claimant was employed as a full-time office assistant. On January 5, 2021, claimant was notified by a public health representative that she came into close contact with a person who had tested positive for COVID-19 and that she needed to quarantine due to the exposure. Claimant's minor children, ages 9 years old and 8 years old, were also quarantining due to COVID-19 exposure and were unable to attend school or daycare. Claimant was off of work during her COVID-19 quarantine from January 5, 2021 through January 16, 2021. She returned to work on after her quarantine ended and her minor children were allowed to return to school. Claimant received \$494.00 in regular unemployment insurance benefits between January 3, 2021 and January 16, 2021. Claimant also received \$600.00 in Federal Pandemic

Unemployment Compensation (FPUC) benefits for those two weeks. No Federal Pandemic Unemployment Assistance (PUA) application has been filed by the claimant.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant never received the decision denying her benefits. She filed the appeal promptly after receiving other decisions stating she was overpaid benefits. As such, the appeal shall be considered timely due to U.S. postal service action in not delivering the initial denial decision to the claimant. The next issue is whether the claimant was able to and available for work. The administrative law judge finds that she was not.

Iowa Code § 96.4(3) provides:

Required Findings.

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", 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 Admin. Code r. 871-24.22(1) 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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A

statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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.

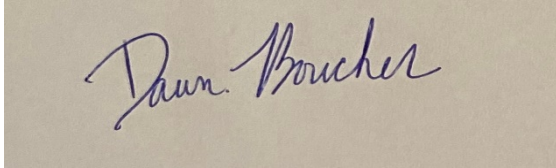
Iowa Admin. Code r. 871—24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

For receipt of State of Iowa unemployment insurance benefits, the burden is on the claimant to establish that they are able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Because the claimant was on COVID-19 quarantine from January 5, 2021 through January 16, 2021 and did not have arrangements for child care, she was not considered able to and available for work pursuant to Iowa law. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective her original claim date of January 3, 2021. Claimant may be eligible for Federal Pandemic Unemployment Assistance (PUA) benefits during her two-week quarantine; however, she would need to file an application for PUA benefits to determine her eligibility.

DECISION:

The appeal is considered timely. The February 22, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work or available for work effective January 3, 2021. Unemployment insurance benefits funded by the State of Iowa are denied effective January 3, 2021 and continuing until the claimant establishes that she was able to work and available for work.



Dawn Boucher
Administrative Law Judge

February 24, 2022
Decision Dated and Mailed

db/db

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa. 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 and were unemployed between February 2, 2020, and June 12, 2021 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/pandemic-unemployment-assistance-proof-earnings-submission>.