

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ATTACHE WASHINGTON
Claimant

ALLIED UNIVERSAL
Employer

APPEAL 21A-UI-08807-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Attache Washington, filed an appeal from the February 9, 2021, (reference 03) unemployment insurance decision that denied benefits effective October 4, 2020. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2021. Claimant participated and testified. The employer did not participate. The administrative law judge took official notice of the agency records. No exhibits were admitted into the record.

ISSUE:

Is the claimant's appeal timely? Are there other reasonable grounds to consider it timely?
Is the claimant partially or totally unemployed?
Is claimant able to and available for work effective October 4, 2020?

FINDINGS OF FACT:

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

The claimant began working for the employer, Allied Universal, as a full-time security guard on July 7, 2020. The claimant last worked for the employer on September 19 or 20, 2020.

The claimant cannot drive to commute back and forth from work. The employer agreed to help her commute back and forth from work initially. The claimant used public transportation to get to the East Moline bus terminal and her supervisor, Melana (last name unknown), would drive her to the employer's assignment at Tyson. Just before her separation from employment, the claimant and Melana came to the realization that this arrangement would not work for the winter months because it would add delay to her commute. Manager Carlos (last name unknown) promised to find the claimant an assignment in Davenport, Iowa. Despite his promise, Carlos did not find her an assignment in Davenport, Iowa.

A disqualification decision was mailed to the claimant's address of record on February 9, 2021. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was

when the claimant was informed of her disqualification just prior to when she filed her appeal on March 25, 2021. (Exhibit D-2) The appeal was sent immediately after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal has reasonable grounds to be considered otherwise timely. The administrative law judge further concludes the claimant was able and available and totally unemployed effective October 4, 2020, due to her separation from employment.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the first notice she had of disqualification. Therefore, the appeal shall be accepted as timely.

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 96.19, 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 § 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 provides, in relevant part:

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.


An employee is partially unemployed and does not have to be able to work, available for work, and actively and earnestly seeking work, if during any week they work less than their regular full-time hours and earn less than their weekly benefit amount plus fifteen dollars or if they are laid off due to a lack of work for no more than four weeks. The claimant credibly testified she was not temporarily laid off due to lack of work, but was fully and permanently separated from employment on September 19 or 20, 2020. Benefits are granted, provided she is otherwise eligible.

DECISION:

The February 9, 2021, (reference 03), unemployment insurance decision is reversed. The claimant was not partially, but totally, unemployed and able to and available for work effective October 4, 2020. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether the claimant's separation disqualifies her from benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.



Sean M. Nelson
Administrative Law Judge
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June 30, 2021
Decision Dated and Mailed

smn/ol