NICHOLAS C AMRINE Claimant **KUM & GO LC** Employer	**APPEAL 20A-UI-05677-CL-T** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 03/15/20** **Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On June 9, 2020, the claimant filed an appeal from the April 13, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation of employment. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2020. Claimant participated. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Is 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: On April 13, 2020, Iowa Workforce Development (IWD) mailed a reference 01 unemployment decision to claimant that denied benefits. The decision warned that an appeal was due by April 23, 2020.

Starting at the beginning of April, claimant was staying at his grandmother's home in rural Brighton, Iowa. Claimant wanted to stay in a less populated area due to the COVID 19 pandemic. Claimant did not return to his apartment in Cedar Rapids until mid-May 2020. Because of his absence, claimant's mail piled up and was returned to the sender by the post office. Therefore, claimant did not receive the decision that denied him benefits. Claimant began calling Iowa Workforce Development, and on June 9, 2020, was giving the explicit instructions on how to file an appeal.

On June 9, 2020, claimant filed an appeal.

Claimant began working for employer in 2015. Claimant last worked as a part-time sales manager. Claimant was separated from employment on February 11, 2020, when he resigned to take other employment.

Claimant started his new job on February 24, 2020. He worked there for about a month before he was laid off.

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 § 96.6(2) provides, in pertinent part:

> 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. . . . 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.

The claimant did not have an opportunity to timely 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.

The next issue is whether claimant's separation from employment disqualifies claimant from receiving unemployment insurance benefits.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(1)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed

services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In this case, claimant resigned for the sole purpose of accepting other employment. Claimant did accept the other employment and performed services with the new employer. Therefore, claimant is qualified to received benefits based on this separation from employment, and this employer, Kum & Go (Account 281703) will not be charged.

The last issue is whether claimant was able to and available for work during the approximate seven weeks he was staying at his grandmother's home in rural Brighton, Iowa.

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 96.1A, subsection 38, paragraph "b", subparagraph (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 Admin. Code r. 871-24.23(25) provides:

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

> (25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

In this case, claimant was out of town and not in the labor market for the seven weeks ending May 16, 2020. Claimant was not able to and available for work and is not eligible for regular, state-funded unemployment insurance benefits during that time period.

DECISION:

The April 13, 2020, (reference 01) unemployment insurance decision is modified in favor of claimant. The appeal is timely. Claimant voluntarily left the employment for other employment. The separation does not disqualify claimant from receiving benefits. Benefits are allowed, for the time period he is otherwise eligible. Employer's account shall not be charged. Benefits are denied for the seven weeks ending May 16, 2020, as claimant was not able to and available for work during that time period.

_____
Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 16, 2020_____
Decision Dated and Mailed

cal/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for the seven weeks ending May 16, 2020. 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 due to disqualifying separations, 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 under the program.** Additional information on how to apply for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information.