

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PHYLLIS JENSEN**

Claimant

**APPEAL 21A-UI-24608-SN-T**

**AMENDED  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 04/05/20**

**Claimant: Appellant (4R)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 8, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2022. The hearing was held jointly with appeal 21A-UI-24609-SN-T and 21A-UI-24610-SN-T. Claimant participated and testified. The employer did not participate. Official notice was taken of the agency records. Exhibits D-1 and D-2 were received into the record.

This amended decision has been amended to clarify that it modified the decision of the representative in favor of the appellant.

**ISSUES:**

Whether the claimant's appeal is untimely? Whether there are reasonable grounds to consider it otherwise timely?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Whether the claimant was able and available for work effective November 12, 2020?

**FINDINGS OF FACT:**

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

The claimant was employed full-time as a cashier with the employer, Casey's Marketing Company, since 2020. General Manager Monica Young was the claimant's immediate supervisor. The claimant primarily worked behind the register.

In March 20, 2020, the claimant obtained a note from her physician. The note stated that the claimant was at high risk of injury or death if she was infected by Covid19. After receiving this

doctor's note, the claimant presented it to Ms. Young. The claimant was on a leave of absence until August 2020.

On November 12, 2020, the claimant obtained another note from her physician restricting her from working in public with the same rationale for an indeterminate amount of time. During the hearing, the claimant explained that she relied on the advice of her physician, which did not consider the specific circumstances of her work environment. The claimant presented this letter to Ms. Young. The claimant did not state she quit. She intended to return when she felt safe working in public. Ms. Young granted her request for a leave of absence.

On February 12, 2021, the claimant returned to work. The claimant has been working her regular hours since that date.

The following section of the findings of fact describe the findings necessary for the timeliness issue.

A disqualification decision was mailed to the claimant's address of record on February 8, 2021. The claimant did not receive the decision. (Exhibit D-1) The first notice of disqualification was the overpayment decisions dated November 2, 2021, reference 02 and 03. These decisions stated the final day for appeal was on November 12, 2021. The claimant's appeal was sent on November 8, 2021. (Exhibit D-2)

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal is otherwise timely. He further concludes the claimant did not separate, but was on a leave of absence from November 12, 2020 to February 12, 2021. As a result, the claimant is not eligible for benefits because she was not able and available for work.

*Whether the claimant's appeal was timely? Whether there are reasonable grounds to consider it otherwise timely?*

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 overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

*Whether the claimant's separation is disqualifying?*

Second, the administrative law judge will evaluate whether the claimant's separation is disqualifying.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. *Layoffs*. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. *Quits*. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. *Other separations*. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit 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.

j. *Leave of absence*. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

- (1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.
- (2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.
- (3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the claimant never separated from employment. Iowa Admin. Code r. 871-24.1 (113) defines the concepts of quit, discharge, layoff and other separations. The findings of fact do not support the notion the claimant quit because she intended to return and did return. The findings of fact also do not support the notion she was discharged, laid off or was separated under the catch all provision. The operation of Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) illustrates this non-separation in a different way. As a result, the penalty of having to earn her ten times her weekly benefit amount should not be assessed against the claimant.

*Whether the claimant was able and available for work?*

Third, the administrative law judge will evaluate whether the claimant was able and available for work effective November 12, 2020.

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 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. 871-24.23(10) and (35) provides:

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

- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.
- (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.

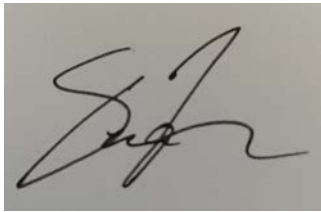
The claimant was not able and available for work because she requested and was granted a leave of absence. This makes her ineligible under Iowa Admin. Code r. 871-24.23(10). Alternatively, the claimant appears to be ineligible under Iowa Admin. Code r. 871-24.23(35) because she was restricted from working anywhere in public for an indeterminate amount of time. Benefits are denied.

**DECISION:**

The February 8, 2021, (reference 01) unemployment insurance decision modified in favor of the appellant. The claimant should not receive the ten times weekly benefit amount penalty because she did not separate from employment. However, the claimant is ineligible effective November 12, 2020 because she was not able and available for work.

**REMAND:**

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant was able and available from April 5, 2020 to August 1, 2020 given the facts outlined in the findings of facts above.



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

February 7, 2022  
Decision Dated and Mailed

smn/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.