

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANN BONANNO

Claimant

APPEAL 21A-UI-15198-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMPBELLS NUTRITION CENTERS INC

Employer

OC: 03/29/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Ann Bonanno, filed an appeal from the August 24, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination she was not able to and available for work for the week ending March 29, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on September 24, 2021, at 11:00 a.m. The claimant participated. The employer participated through Office Manager Melanie Gibb.

ISSUE:

Was the claimant able to work and available for work for the week ending March 29, 2021?

FINDINGS OF FACT:

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

The claimant worked for the employer, Campbell's Nutrition Centers Inc., as a part-time vitamin sales associate from September 6, 1999. The claimant is not guaranteed a certain amount of hours for work each week. The claimant's rate of pay is \$17.00 per hour.

On March 14, 2020, the claimant called the employer's owner, Diane Lahodny. The claimant told Ms. Lahodny that she did not feel comfortable reporting to work because of the Covid19 pandemic. In particular, the claimant lives with her mother who has had multiple strokes and atrial fibrillation which places her at heightened mortality risk due to Covid19. The claimant's husband also has underlying medical issues and is 69 years old. The claimant was concerned because customers and employees were not required to wear masks and she was worried about transmitting Covid19 to these loved ones. Ms. Lahodny excused the claimant from coming to work.

On May 29, 2020, the claimant said she was willing to return to work because the employer imposed a requirement that customers and employees wear masks while in the store.

A disqualification decision was mailed to claimant's last known address of record on August 24, 2020. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 3, 2020. (Exhibit D-1) The appeal was not filed until July 6, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The first notice the claimant received of disqualification was a statement she sent to her on May 14, 2021 stating she must repay \$1,104.00 in unemployment insurance benefits. The claimant did not become aware of this statement until early June 2021, when she returned from a trip just after Memorial Day.

In mid-June 2021, the claimant spoke with an Iowa Workforce Development representative who informed her of the August 24, 2020, reference 01, decision. The claimant attempted to file online through Iowa Workforce Development's online appeal portal for the next two weeks. On July 6, 2021, the claimant spoke with a clerk in the Appeals Bureau, who helped her file an appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely. The administrative law judge further concludes that the claimant was not able to work and available for work effective March 29, 2021.

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). Arguably, the claimant received notice of disqualification in mid-May, when she received a statement regarding overpayment of benefits. The administrative law judge does not believe this is the relevant period because she was not informed of appeal rights on this document. The claimant was informed of the decisions adverse to her claim in mid-June 2021. The claimant could not get Iowa Workforce Development's online appeal portal to work over the next two weeks. The claimant appealed on July 6, 2021 after overcoming many obstacles in the way of her ability to appeal.

The next issue is whether the claimant was able and available for work effective March 29, 2021. The administrative law judge concludes she was not able and available for work.

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 Admin. Code r. 871-24.22(1)a 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.

Iowa Admin. Code r. 871-24.22(2) 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.

(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(10) provides:

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

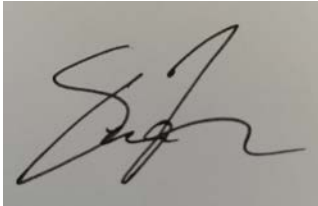
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant requested and was granted a leave of absence from March 29, 2020 to May 29, 2020. These circumstances make her ineligible for benefits under Iowa Admin. Code r. 871-24.23(10).

DECISION:

The August 24, 2020, reference 01, unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant was not able to work and available for work effective March 29, 2020. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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

September 30, 2021
Decision Dated and Mailed

smn/scn