

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TANYA DANIELS
Claimant

S & S EMPLOYMENT PARTNERS LLC
Employer

APPEAL 21A-UI-15673-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/20
Claimant: Appellant (1R)

Iowa Code section 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 23, 2021 (reference 01) unemployment insurance decision that denied benefits effective March 21, 2021. The parties were properly notified of the hearing. A telephone hearing was held on September 2, 2021, at 10:00 a.m. The claimant participated. Employer participated through Director Tori Glade. No exhibits were admitted. Official notice was taken of the administrative record. Exhibits D-1, D-2 and A were received into the record.

ISSUES:

Whether the claimant's appeal is timely?
Whether claimant is totally, partially or temporarily unemployed?
Whether claimant is able to and available for work?
Whether claimant is still employed at the same hours and wages?
Whether employer's account is subject to charge?

FINDINGS OF FACT:

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

The claimant began employment with S & S Employment Partners LLC on May 28, 2019. The claimant had been working for the predecessor in interest prior to that since 2017. The claimant worked at one assignment at the Iowa Secretary of State's office for that entire period. Her schedule fluctuated from 32 hours to 40 hours per week. The claimant's hourly wage was \$19.00.

The claimant's assignment at the Iowa Secretary of State's office ended on March 25, 2021. The claimant filed an additional claim for benefits effective March 21, 2021. After her assignment ended, the claimant informed the Director Tori Glade. Ms. Glade asked for the claimant's resume because she was not aware of her skillset. The claimant did not provide this

information because she believed Ms. Glade had this information on hand from when the predecessor in interest received it. The claimant did not provide this information until July 13, 2021. That same day, the claimant yelled at Ms. Glade. The claimant accused Ms. Glade of holding up her unemployment claim. Ms. Glade testified that she did not feel comfortable working with the claimant in the future based on this conversation. The claimant's weekly benefit amount is \$337.00.

A disqualification decision was mailed to the claimant's address of record on June 23, 2021. 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 July 3, 2021. (Exhibit D-1) The appeal was not filed until July 13, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2) The claimant explained she first became aware of the decision disqualifying her from benefits when she entered an Iowa Workforce Development center on that day. The claimant appealed immediately after she was told about the decision finding her ineligible for benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 entered an Iowa Workforce Development center because she had not received the decision on July 13, 2021. The claimant immediately appealed the decision on that day after being informed of its result. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant the claimant was able and available effective March 21, 2021. The administrative law judge concludes she was not able and available effective March 21, 2021.

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. R. 871-24.23(26) provides:

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.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer

or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Code section 96.1A(37) 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.

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.

Ms. Glade credibly testified that she requested the claimant provide her with an updated resume. The claimant did not dispute that this occurred, but she felt like it was unnecessary because she assumed Ms. Glade had this information on file. The employer had work available, but needed this updated information to place the claimant at assignments. The administrative law judge finds this to be a perfectly reasonable request that the claimant denied. By this inaction she has not established that she is genuinely attached to the labor market. Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The June 23, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant refused to provide an updated resume to the employer, so that it could place her at additional assignments. Benefits are denied effective March 21, 2021.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant's separation from the employer on July 13, 2021 entitles her to benefits.



Sean M. Nelson
Administrative Law Judge
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Fax (515) 725-9067

September 14, 2021
Decision Dated and Mailed

smn/ol