

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN POWELL
Claimant

**NORWALK COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 21A-UI-25553-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeals
Iowa Code section 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, John Powell, filed an appeal from the January 22, 2021, reference 02, unemployment insurance decision that denied benefits effective April 26, 2020. The parties were properly notified about the hearing. A telephone hearing was held on January 18, 2022. The hearing was held jointly with appeal 21A-UI-25559-SN-T, 21A-UI-25562-SN-T, 21A-UI-25564-SN-T, and 21A-UI-25568-SN-T. The claimant participated and testified. The employer participated through Human Resources Generalist Tiffany Patterson. Exhibits D-1 and D-2 were received into the record. Official notice was taken of the agency records.

ISSUES:

Whether the claimant's appeal is untimely? Whether there are reasonable grounds to consider his appeal otherwise timely?
Is the claimant partially or totally unemployed?
Is claimant able to and available for work effective April 26, 2020?

FINDINGS OF FACT:

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

The claimant started working as a full-time para educator for the employer on November 30, 2019. The claimant only works during the 178 days that school is in session.

As a para-educator, the claimant helps special education educators with aligning their services to individualized education plans. While the claimant works with students, he does not perform services in an instructional capacity.

On March 17, 2020, Governor Kim Reynolds issued a proclamation closing in-person school for the remainder of the academic year.

In early-May 2020, the claimant was sent a contract of reasonable assurance stating he would have a contract for the following academic year. The academic year ended on June 2, 2020.

The claimant earned his full paycheck of \$427.55 per week for each week of his contract until the week ending June 6, 2020. KCCO only reflects the claimant's wages from his part-time employment Petco. The claimant said he was unaware he was supposed to report wages from all of his jobs.

The following section of the findings of fact gives the facts necessary for the timeliness issue:

A disqualification decision was mailed to claimant's last known address of record on January 22, 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 February 1, 2021. (Exhibit D-1) The first notice of disqualification the claimant received was receipt of an overpayment decision dated November 16, 2021. The appeal was filed on November 18, 2021, which within the appeal period of that decision. (Exhibit D-2)

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

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 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.

Iowa Admin. Code 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.

The representative's conclusion is incorrect. The claimant's employment with this employer was full-time. As a result, Iowa Admin. Code r. 871-24.23(26) is inapplicable.

However, the claimant received his full-paycheck of \$427.55 far exceeds his weekly benefit amount of \$185.00 until the end of the academic year, which ended with the week ending June 6, 2020. As a result, he cannot be considered unemployed as a matter of law. Since the claimant was fully employed, the remaining issues are moot. Benefits are denied.

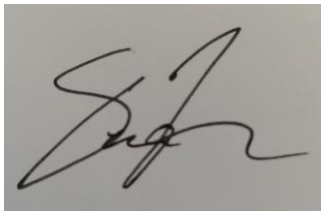
It appears the representative's decision was because the claimant omitted reporting these wages when he made his weekly claims for unemployment. The claimant said he was unaware he was supposed to report all wages earned when he made his weekly claims.

DECISION:

The January 22, 2021, reference 02, unemployment insurance decision is affirmed. The claimant was fully employed from the week ending April 26, 2020 through the week ending June 6, 2020. Benefits are denied.

REMAND:

The administrative law judge is remanding the issue regarding the claimant's failure to report all wages to the Integrity Bureau.



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

February 17, 2022
Decision Dated and Mailed

smn/mh

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 were unemployed between February 2, 2020, and June 12, 2021, 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/pandemic-unemployment-assistance-proof-earnings-submission>. The authorization code is 100038, or the pin that you used for your regular unemployment appeal hearing.