

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANNA SWAYZER**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-24875-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 28, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was not able to and available for work effective November 15, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on January 6, 2022. The claimant participated. The employer participated through Store Manager Sean Milbrandt. The employer was represented by Unemployment Insurance Representative Ein Bewley. Official notice was taken of the administrative records. Exhibits A, B, D-1 and D-2 were received into the record.

**ISSUES:**

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

Was the claimant able to work, available for work effective November 15, 2020?

**FINDINGS OF FACT:**

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

The claimant began working as a part-time cashier for the employer on May 31, 2017. Her hourly rate is \$11.15.

On November 14, 2020, the claimant reported to Mr. Milbrandt that she had been in close contact with her parents who tested positive for Covid19. Mr. Milbrandt instructed the claimant to quarantine for seven days. Shortly after this conversation, the claimant began experiencing fatigue and a headache so severe that she was incapable of getting out of bed.

On November 21, 2020, the claimant tested positive for Covid19. The Des Moines County Health Department instructed her to quarantine for seven additional days. The claimant relayed this information to Mr. Milbrandt.

On November 28, 2020, the claimant returned to work. The claimant continued to experience some symptoms of Covid19 after that date, but she was able to work. The employer would have provided her work if she had not been ill. The employer did not compensate her for the time when she was on quarantine.

A disqualification decision was mailed to the claimant's address of record on January 28, 2021. (Exhibit D-1) The claimant did not receive the decision. The first notice of disqualification was the overpayment decision of November 2, 2021. The appeal was sent on November 5, 2021. (Exhibit D-2)

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

The administrative concludes the claimant's appeal is otherwise timely. He further concludes she was not able and available for work effective November 15, 2020.

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.

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective November 15, 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 provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

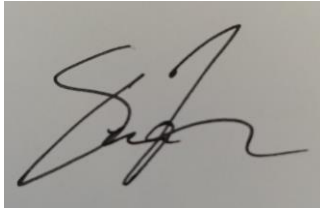
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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 was too ill to work for the whole period she made weekly claims. This is disqualifying under Iowa Admin. Code r. 871-24.23 (1). The claimant was also restricted from work due to physician orders. This is disqualifying under Iowa Admin. Code r. 871-24.23(35). Accordingly, she is not eligible for unemployment insurance benefits.

**DECISION:**

The January 28, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was able to work and available for work effective November 15, 2020. Benefits are denied.



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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 1, 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 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.