

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICIA A DOUD**  
Claimant

**MEDIACOM COMMUNICATIONS**  
Employer

**APPEAL 21A-UI-20843-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38) – Temporary, Total, Partial Unemployment  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 28, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her still being employed at the same hours and wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on November 16, 2021. The claimant participated personally. The employer participated through witness Chelsea Delleman. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-20848-DB-T; 21A-UI-20849-DB-T; and 21A-UI-20850-DB-T.

**ISSUES:**

Is the appeal timely?  
Is the claimant eligible for total, partial, or temporary unemployment benefits?  
Is claimant employed for the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated October 28, 2020 (reference 01) that found the claimant was not eligible for benefits was mailed to the claimant's address of record. Claimant never received it in the mail. Claimant filed an appeal on September 17, 2021 after receiving other decisions stating she was overpaid benefits.

Claimant began her employment with this employer on October 13, 2014. She was hired as a full-time field support representative. In March of April of 2020, claimant contracted COVID-19 and was off of work. Her physician released her to return back to work, but only for part-time hours. She attempted to work part-time hours from June 7, 2020 through the week-ending August 1, 2020; however, was having difficulty doing so due to the long term COVID-19 related

complications that she suffered from. Claimant was on short-term disability from July 27, 2020 through January 25, 2021. Claimant continues to suffer from COVID-19 related long term symptoms such as chronic cough.

Claimant filed her original claim for unemployment insurance benefits with an effective date of June 7, 2020. From June 7, 2020 through August 1, 2020, claimant reported the wages she earned each week working part-time for the employer. After August 1, 2020, she was no longer able to work due to her illness. Claimant has not yet fully recovered from her COVID-19 related long term symptoms.

Claimant filed another claim for unemployment insurance benefits with an effective date of August 29, 2021. The matter of whether the claimant has been able to and available for work during that claim year will be remanded to the Benefits Bureau for an initial investigation and determination.

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

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 mailed to the claimant's last known address, 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v.*

*Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant filed an appeal after she learned that the denial decision exists, as she never received it in the mail due to postal service delay or error. As such, her appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2). The next issue is whether the claimant was totally, partially, or temporarily unemployed and whether the claimant was able to work and available for work.

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Code § 96.7(2)a(2)a provides:

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.

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.

In this case, the claimant reduced her hours when her physician recommended she do so to a part-time status. Claimant continued to work part-time hours, with no guarantee of full-time hours, from June 7, 2020 through August 1, 2020. As such, claimant was still employed in the part-time position at the same hours and wages as contemplated when she switched to part-time to begin with. Claimant was not considered partially unemployed from June 7, 2020 through August 1, 2020 and benefits are denied for that period of time.

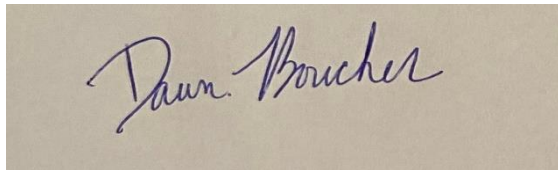
From August 1, 2020 through the end of her benefit year on June 6, 2021, the claimant was off of work completely. She was on short-term disability from July 27, 2020 through January 25, 2021. Because the claimant has not been able to work due to her illness and complications stemming from her illness, benefits are denied pursuant to Iowa Code § 96.4(3) from August 2, 2020 through June 6, 2021.

**DECISION:**

The appeal shall be considered timely. The October 28, 2020 (reference 01) decision is affirmed. Claimant was still employed at the same hours and wages effective June 7, 2020 and was not considered partially unemployed. Claimant was also not able to and available for work from August 2, 2020 through June 6, 2021 due to her COVID-19 related long term illness. Benefits are denied effective June 7, 2020 through June 6, 2021.

**REMAND:**

The issue of whether the claimant has been able to work, available for work, and actively and earnestly seeking work during her claim year beginning August 29, 2021 is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

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Dawn Boucher  
Administrative Law Judge

December 20, 2021  
Decision Dated and Mailed

db/mh