

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANETTE M ALLEN
Claimant

SHEARERS FOODS BURLINGTON LLC
Employer

APPEAL 20A-UI-10546-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Janette Allen (claimant) appealed a representative's June 16, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was not able to perform work with Shearers Foods Burlington (employer) as of April 12, 2020, due to illness. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 20, 2020, before Administrative Law Judge Julie Elder. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. 20A-UI-10546.JE and 20A-DUA-00276.JE were heard at the same time.

A decision was issued on November 20, 2020. That decision was vacated on December 1, 2020, due to a jurisdictional issue.

ISSUES:

The issue is whether the appeal was filed in a timely manner and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on June 16, 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 June 26, 2020. The appeal was filed on August 31, 2020, when the claimant discovered the decision's existence.

The claimant works for the employer as a full-time production worker. The claimant requested and was granted time off to self-quarantine due to Covid-19 from April 18, 2020, through May 1, 2020. Her physician provided her with a note excusing her from work through May 1, 2020. The claimant felt better and returned to work on May 7, 2020.

The claimant worked her regular hours from May 10, 2020, through July 18, 2020. The employer laid the claimant off for lack of work for the week ending July 25, 2020. She returned to work on July 26, 2020, and worked through August 22, 2020.

The claimant became ill and needed to quarantine again for the three-week period ending September 12, 2020. She requested and the employer approved leave for the time away from work. The claimant's physician provided a doctor's note returning her to work after September 14, 2020. The claimant worked her regular hours, 7:00 a.m. to 3:00 p.m., the week ending September 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) 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 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. 871-24.23(1), (10) and (23) provide:

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.

(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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

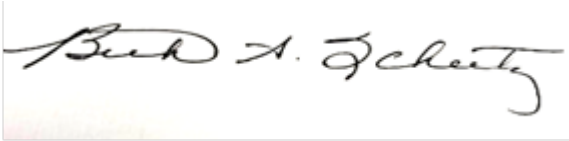
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with someone who was diagnosed with Covid-19. To prevent the spread of a deadly virus, the claimant self-quarantined. She was not able and available for work during the periods of self-quarantine. The claimant is disqualified from receiving unemployment insurance benefits for the four-week period ending May 9, 2020, and the three-week period ending September 12, 2020.

During the one-week period ending July 25, 2020, the employer had no work for the employer. If a worker is unemployed for a period not to exceed four weeks due to lack of work, the employee is temporarily unemployed. The claimant was temporarily unemployed for the one-week period ending July 25, 2020. No evidence was presented that indicated the claimant was not able and available for work for that week. Benefits are allowed for the week ending July 25, 2020, provided the claimant is otherwise eligible.

The claimant filed weekly claims for weeks when she was fully employed and working her hours. The claimant was working full-time for the employer from August 1, 2020, through August 22, 2020, and the week ending September 19, 2020. The claimant is disqualified from receiving unemployment insurance benefits during those weeks because the claimant was not available for other work.

DECISION:

The representative's June 16, 2020 decision (reference 01) is modified in favor of the appellant. The decision is timely. Benefits are allowed for the week ending July 25, 2020, provided the claimant is otherwise eligible. The claimant is disqualified from receiving unemployment insurance benefits from April 12, 2020, through July 18, 2020, and from July 26, 2020, through September 19, 2020, because she was not able and available for other work.

A handwritten signature in black ink that reads "Beth A. Scheetz". The signature is written in a cursive style and is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

December 11, 2020
Decision Dated and Mailed

bas/scn