

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN S CRANDELL

Claimant

APPEAL 21A-UI-10803-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SENIOR LIVING EE GROUP LLC

Employer

OC: 03/29/20

Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Admin. Code r. 871-24.23(10) – Leave of Absence from Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 7, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for regular unemployment benefits funded by the State of Iowa because he was on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on July 2, 2021. The claimant participated personally. Attorney Nikolas Pilcher represented the claimant. The employer registered witness Lisa Eastman to participate in the hearing; however, Lisa Eastman was not available for the hearing when the Administrative Law Judge telephoned her and no returned call was received from her before the record was closed. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-10804-DB-T.

ISSUES:

Was the appeal timely?

Was the claimant able to and available for work?

Was the claimant on an approved leave of absence from work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated August 7, 2020 (reference 02) that found the claimant was not eligible for regular unemployment insurance benefits funded by the State of Iowa was mailed to the claimant's address of record. Claimant never received the decision in the mail. Claimant filed an appeal on April 7, 2021 after receiving another decision stating that he was overpaid unemployment insurance benefits funded by the State of Iowa. Claimant only became aware that he was denied benefits when he received the overpayment decision dated March 29, 2021 and he filed an appeal prior to the appeal deadline listed for the March 29, 2021 (reference 03) overpayment decision.

Claimant was employed with this employer as a full-time maintenance director. His employment began in November of 2019. When the COVID-19 pandemic occurred, the claimant's medical provider advised that he quarantine and refrain from worked due to his underlying medical conditions making him more susceptible to serious complications should he contract COVID-19. See Exhibit A. Claimant's medical provider continues to advise him to quarantine to date until he is able to be vaccinated. Claimant advised the employer of this and was granted a leave of absence from work.

In February of 2021, claimant was notified by another employee of the employer that he was no longer the maintenance director and was no longer employed with the employer. Claimant was instructed to retrieve his personal belongings from the employer's building, which he did. The issue of whether the claimant's separation from employment was disqualifying will be remanded to the Benefits Bureau for an initial investigation and determination.

Claimant filed an application for Federal Pandemic Unemployment Assistance (PUA) benefits on April 5, 2020. No decision whether the claimant is eligible for PUA benefits has been issued by Iowa Workforce Development. The issue of whether the claimant was eligible for PUA benefits 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 to this decision after he received another decision stating he was overpaid benefits. He never received the August 7, 2020 (reference 02) decision in the mail, and as such, never received notice that it existed. Therefore, the appeal shall be considered timely.

The next issue is whether the claimant was able to and available for work pursuant to Iowa law. The administrative law judge finds that he was not.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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

§ 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Because the claimant's medical practitioner has advised him not to work and has not released him as being able to work at this time, regular unemployment insurance benefits funded by the State of Iowa are denied effective March 29, 2020. Iowa Code § 96.4(3).

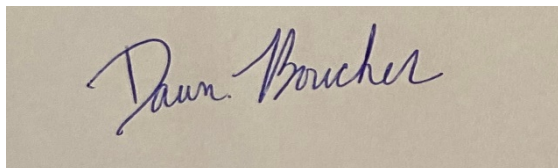
DECISION:

The appeal shall be considered timely. The August 7, 2020 (reference 02) unemployment insurance decision is affirmed. The claimant was not able to work or available for work effective March 29, 2020. Unemployment insurance benefits funded by the State of Iowa are denied effective March 29, 2020 pursuant to Iowa Code §96.4(3).

REMAND:

The issue of whether the claimant is eligible for PUA benefits pursuant to his application filed on April 5, 2020 is remanded to the Benefits Bureau for an initial investigation and determination.

The issue of whether the claimant's separation from employment is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

July 13, 2021
Decision Dated and Mailed

db/kmj

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- You will need to apply for PUA to determine your eligibility under the program. For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. PUA claims may be backdated prior to June 12, 2021 depending on eligibility requirements. Additional information can be found at:
<https://www.iowaworkforcedevelopment.gov/COVID-19>