

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON M MCCOY
Claimant

APPEAL 20A-UI-08136-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

On July 10, 2020, the claimant filed an appeal from the June 17, 2020, (reference 02) unemployment insurance decision that denied benefits based on a determination that his physician determined he was unable to work. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2020. Claimant participated and testified. Official notice was taken of claimant's appeal letter.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

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

A disqualifying unemployment insurance decision was mailed to the claimant's last known address of record on June 17, 2020. Claimant received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 27, 2020. The appeal was not filed until July 10, 2020, which is after the date noticed on the unemployment insurance decision. Claimant testified, when he first received the decision, he contacted Iowa Workforce Development (IWD) because he was confused. Claimant was not sure how the adjudicator had reached her determination, as he had never been taken off work for a doctor. Claimant was working with an IWD representative name Michelle to try to resolve this issue and mistakenly believed she had filed an appeal on his behalf. It was not until July 9, 2020, when he spoke with a different IWD representative that he was informed he still needed to file an appeal.

Claimant further testified, he has never been taken off work by his doctor, but does have an underlying medical condition that confines him to more sedentary work. Claimant reports he worked for approximately two weeks at such a job, prior to being laid off due to the COVID 19

pandemic. Claimant's last employment prior to that was sedentary in nature as well. Claimant further reported, that during the month of April, he was caring for his minor child, who was without school and daycare. There were no other childcare options during that month.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant'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 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 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 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 section 96.8, subsection 5.

The claimant believed an IWD representative was assisting him in filing his appeal after he received the disqualifying decision. When claimant learned he still needed to file an appeal, he did so the very next day. The appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective May 3, 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 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 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 provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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 he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was caring for his minor child, who did not have school or other child care, during the month of April. Claimant had never been taken off work by his doctor, but is limited in the type of work he can perform. These limitations are consistent with claimant's most recent employment. Accordingly, he is not eligible for unemployment insurance benefits for the four-

week period ending May 2, 2020. Claimant has established he is able to and available for work beginning May 3, 2020.

DECISION:

The June 17, 2020, (reference 02) unemployment insurance decision is modified in favor of the claimant. The appeal is timely. Claimant was not available for work for the four-week period ending May 2, 2020 and therefore is not eligible for regular state unemployment insurance benefits during this time frame. The claimant is able to work and available for work effective May 3, 2020. Benefits are allowed, provided he is otherwise eligible.

REMAND:

Claimant reports he worked approximately two weeks in March 2020. However, a search of the administrative records does not show any wages reported for claimant since the fourth quarter of 2018. Accordingly, the issues of missing wages and whether claimant is monetarily eligible for regular state unemployment insurance benefits is remanded to the Benefit and Tax Bureaus of Iowa Workforce Development for initial investigation and determination.



Nicole Merrill
Administrative Law Judge

August 27, 2020
Decision Dated and Mailed

nm/scn

Note to Claimant: This decision determines, at least for some period of time, 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 due to disqualifying separations, 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>.