

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIANNE X WIRTJES

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL 21A-UI-05062-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.19(38) – Total, partial unemployment

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On February 6, 2021, Julianne Wirtjes (claimant/appellant) filed an appeal from the July 17, 2020 (reference 02) unemployment insurance decision that denied benefits from May 3 through May 30, 2020 based on a finding claimant was working enough hours to be considered employed.

A telephone hearing was held on April 16, 2021. The parties were properly notified of the hearing. Claimant participated personally. The University of Iowa (employer/respondent) participated by Jessica Wade.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant able to and available for work?
- III. Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

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

Claimant worked for employer on a semester-by-semester basis. She began working for employer in the fall semester of 2019 and was hired again for the spring semester of 2020. She was employed part-time as a reading practicum supervisor. She had a largely consistent schedule in this position. The contract for the spring semester ended May 15, 2020.

Claimant did not have a contract for the summer of 2020 and did not know if there would be work available for her again in the fall 2020 semester. She was eventually offered and accepted a contract for the fall 2020 semester on August 19, 2020. Claimant filed a weekly claim for benefits from the week ending May 9 through the week ending July 11, 2020.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 17, 2020. That was claimant's correct address at that time. Claimant received the decision around that time. Claimant spoke to a department representative around that time who informed her she did not need to take any further action and should wait to hear further from the department. Claimant therefore did not appeal until she received an overpayment decision in early February 2021. She appealed shortly after receiving that.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 17, 2020 (reference 02) unemployment insurance decision that denied benefits from May 3 through May 30, 2020 based on a finding claimant was working enough hours to be considered employed is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only

basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The administrative law judge finds the delay in appealing was due to agency error or misinformation. Specifically, claimant spoke to a department representative who informed her she did not need to take any further action and should wait to hear further from the department. Claimant did appeal shortly after receiving the overpayment decision. The appeal is therefore timely, and the administrative law judge has jurisdiction to address the underlying issues.

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 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 Admin. Code r. 871-24.23(26) provides:

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

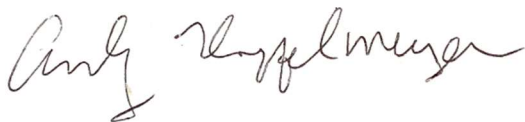
(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The administrative law judge finds claimant was still employed in the same way as contemplated in the contract of hire during the weeks ending May 9 and 16, 2020. Claimant was therefore not totally, partially, or temporarily unemployed during those weeks and is not eligible for benefits.

Claimant's contract ended May 15, 2020. She was able to and available for work in the benefit weeks ending May 23 and 30, 2020. However, no work was available to her, as she did not have a contract for the summer. She is therefore totally unemployed and eligible for benefits in those weeks, provided she otherwise meets all other eligibility requirements.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 17, 2020 (reference 02) unemployment insurance decision that denied benefits from May 3 through May 30, 2020 based on a finding claimant was working enough hours to be considered employed is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 26, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.