

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NYACHIENG P GATBEL
Claimant

APPEAL 20A-UI-09625-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

**OC: 04/19/20
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On August 13, 2020, the claimant filed an appeal from the May 29, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2020. Claimant participated. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received into the record.

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: On May 29, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to claimant's last address of record. Claimant received the decision within a few days of it being mailed. The decision warned that an appeal was due by June 8, 2020. English is claimant's second language and she did not understand the letter. Claimant eventually called Iowa Workforce Development and was instructed to file an appeal. Claimant filed an appeal on August 13, 2020.

Claimant began working for employer on August 27, 2018. Claimant worked for employer as a full-time trainer.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic.

Toward the end of February 2020, claimant became ill and missed work. Claimant's daycare provider, who is 64 years old, also became ill and claimant missed more work. The daycare provider told claimant she would no longer watch her children due to fears regarding COVID 19.

Claimant has a one-year old and a ten-year old. Claimant asked employer for two weeks to find childcare, but employer denied her request and ended her employment.

Claimant has not found childcare.

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 § 96.6(2) provides, in pertinent part:

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. . . . 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.

In this case, claimant did not have a reasonable opportunity to file an appeal as she has a difficult time reading the English language and did not understand the denial letter. After being advised by Iowa Workforce Development to file an appeal, claimant did so. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 19, 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 96.19, 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".

Here, claimant was not able to work due to lack of childcare. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

Claimant has applied for Pandemic Unemployment Assistance (PUA) benefits, but has not received a decision. This matter will be remanded so Iowa Workforce Development can make a decision on her application.

DECISION:

The May 29, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not available for work effective April 19, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.

REMANDED:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development so a decision can be issued on claimant's application for PUA benefits.



Christine A. Louis
Administrative Law Judge
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October 15, 2020
Decision Dated and Mailed

cal/scn