

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERLENE M HOLSTE
Claimant

APPEAL 21A-UI-14887-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASS COUNTY MEMORIAL HOSPITAL
Employer

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.10 – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 11, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her being on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2021. The claimant participated personally. The employer participated through witness Denise Coder. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's administrative records. The hearing was consolidated with Appeal No. 21A-UI-14888-DB-T and 21A-UI-14889-DB-T.

ISSUES:

Was the appeal timely?
Was the claimant able to work and available for work?
Was the claimant on a voluntary leave of absence from work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefit decision was mailed to the claimant's correct address of record on August 11, 2020 (reference 01) that found she was not eligible for regular unemployment insurance benefits funded by the State of Iowa as she was on a voluntary leave of absence from work. Claimant received the decision in the mail on an unknown date. On August 14, 2020, the employer sent an email on her behalf to Iowa Workforce Development (IWD) intending to appeal the decision and notify IWD that its protest had stated that the claimant's hours were reduced due to the COVID-19 pandemic and the employer's lack of work for her. The employer contacted IWD on the claimant's behalf on numerous occasions after it did not receive a response email back from its August 14, 2020 email and was told by various IWD representative that the matter had been taken care of or fixed. On or about June 25, 2021, the employer was told by an IWD that the claimant needed to file an appeal to get the matter fixed. An appeal was filed by the claimant, with the employer's assistance, on June 26, 2021.

Claimant has worked for this employer as a full-time office clerk beginning June 4, 2001. Claimant continues to work for the employer to date. From April 4, 2020 through May 30, 2020, the claimant was laid off by the employer due to lack of work or reduced census. Claimant returned after May 30, 2020 to her regular full-time position when the employer told her that work was now available for her. Claimant filed weekly continued claims from April 5, 2020 through May 30, 2020 when she was laid off. Claimant was able to and available for work from April 5, 2020 through May 30, 2020 if work would have been available for her.

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 decision was received; however, the claimant, through her employer, contacted IWD prior to the appeal deadline and was given incorrect information that the matter was taken care of. As such, the delay in the claimant filing the appeal was due to division error or misinformation and the appeal shall be considered timely.

The next issue is whether the claimant was eligible for regular unemployment insurance benefits from April 5, 2020 through May 30, 2020. The administrative law judge finds that she was eligible.

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 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(10) provides:

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

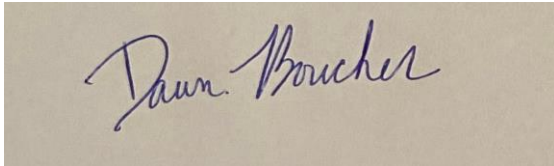
(10) **The claimant requested** and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(emphasis added).

The credible evidence establishes that the claimant never requested a voluntary leave of absence and was not voluntarily unemployed. Claimant was temporarily unemployed for the first four weeks beginning April 5, 2020 and remained totally unemployed due to a lack of work through May 30, 2020. As such, pursuant to Iowa Code § 96.19(38), regular unemployment insurance benefits funded by the State of Iowa are allowed effective April 5, 2020, provided the claimant is otherwise eligible.

DECISION:

The appeal is timely. The August 11, 2020 (reference 01) unemployment insurance decision is reversed. The claimant did not request a leave of absence. The claimant was laid off due to lack of work. Benefits are allowed effective April 5, 2020 through May 30, 2020, provided the claimant remained otherwise eligible.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

db/mh