

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SIERRA HEUN
Claimant

K.C.'S LANDING LLC
Employer

APPEAL 21A-UI-15234-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION
REOPENED**

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On July 6, 2021, the claimant/appellant filed an appeal from the August 17, 2020, (reference 03) unemployment insurance decision that disallowed benefits based on claimant refusing suitable work with the employer. The hearing was originally scheduled for August 30, 2021 at 11:00 a.m. A default decision was entered. The claimant did not receive the notice of the hearing and an order was entered re-opening the record. The parties were properly notified about the hearing. A telephone hearing was held on September 29, 2021. The hearing was held together with Appeals 21A-UI-15235-CS-T and Appeals 21A-UI-15236-CS-T. Claimant participated at the hearing. Employer participated through Owner, Connie Brown. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Was claimant's appeal timely?

Is the claimant able to and available for work?

Did the claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The unemployment insurance decision was not mailed to the appellant's address of record. Claimant had called to change her address to a PO Box but the IWD's system would not update the claimant's address. The appellant did not find out about this decision until July 2021. Claimant had received correspondence about being subject to garnishment if she did not pay back the overpayment. Claimant called IWD to inquire about the letter and that is when she found out about this decision. The appeal was filed immediately after she communicated with IWD and learned about this decision.

The claimant was hired in March 2019 as a part time waitress and bartender. The employer was shut down from March 17, 2020 through May 1, 2020. The employer recalled claimant to work and claimant returned to work. On May 15, 2020, claimant became ill and notified Ms. Brown that she would not be able to work due to her illness and waiting on COVID test results. Claimant's test ultimately came back negative. Claimant was able to work and available for work beginning May 30, 2020.

On May 30, 2020, claimant called the employer to return to work and find out her schedule. Ms. Brown did not call claimant back. Claimant contacted a co-worker and the co-worker informed claimant that she was not on the schedule for the month of June. The employer did not subsequently speak with or communicate with the claimant about an offer of work.

In Mid-August 2020, claimant obtained a new job with a new employer.

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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether claimant was able to work and available for work beginning May 15, 2020. For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective May 15, 2020 through May 30, 2020.

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(2) provides:

Benefit 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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Claimant testified that she was ill from May 15, 2020 and was not able to return to work until May 30, 2020. Since claimant was ill she was not available for work during those weeks and does not qualify for benefits for week ending May 23, 2020 and week ending May 30, 2020.

The next issue is whether the claimant refused to apply for or accept an offer of suitable work. For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

No offer of work was made to the claimant. The claimant is qualified to receive benefits because no offer of suitable work was made to the claimant. Benefits are allowed.

DECISION:

The claimant's appeal is timely.

The representative's August 17, 2020, decision (reference 03) is modified in favor of the appellant. Claimant was not available for work due to illness for week ending May 23, 2020 and May 30, 2020 and is not qualified for benefits for those two weeks.

The claimant is qualified to receive unemployment insurance benefits beginning week ending June 6, 2020, provided she is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 30, 2021
Decision Dated and Mailed

cs/scn