

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TATYIANA S GRIFFITH

Claimant

APPEAL 24R-UI-01719-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVENPORT IA HOMECARE LLC

Employer

OC: 10/18/20

Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.7(2)A(2) – Charges to Employer's Account

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 31, 2020 (reference 02) unemployment insurance decision that found that she was not eligible for regular State of Iowa funded unemployment insurance benefits effective October 18, 2020 as she was still employed at the same hours and same wages as her original contract of hire with this employer. Due notice was issued to the parties and an in person hearing was held in Davenport, Iowa on March 6, 2024. The claimant participated personally. The employer participated through witness Paul Bush. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant's appeal considered timely?
Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was issued on December 31, 2020 (reference 02) and mailed to the claimant's correct address of record. It stated that the claimant was not eligible for State of Iowa funded benefits effective October 18, 2020 because she was still employed at the same hours and wages as her original contract of employment with this employer. The claimant never received that decision in the mail, presumably due to postal service error. At some point when the claimant received other decisions, she contacted her local Iowa Workforce Development (IWD) office to discuss what she needed to do. The IWD representative told her that she filed for the wrong type of benefits (State instead of Federal) and that it was too late to file an appeal or file an application for Pandemic Unemployment Assistance (PUA) benefits. After continuing to receive statements in the mail regarding an

overpayment, claimant filed an appeal online on November 29, 2023. This appeal, along with five other cases, were scheduled for hearing.

Claimant filed an initial claim for unemployment insurance benefits effective October 18, 2020. Her established weekly benefit amount was \$323.00. At the time of filing, the claimant was unable to work due to having COVID-19. She experienced fever, cough, chills and other COVID-19 symptoms for approximately 4 weeks before she recovered without hospital intervention. She quarantined with her son during this time period, who was also ill with COVID-19. By the time she filed her original claim for benefits, she was already sick with COVID-19 and not working. She was ill with COVID-19 from at least October 18, 2020 through November 14, 2020. She recovered and was able to return to work on November 15, 2020. She was able to and available for work after November 14, 2020. Claimant continued filing weekly-continued claims for benefits after November 15, 2020 as her employment with REM Iowa Community Services Inc. experienced reduced hours. Claimant filed for weekly-continued benefits until September 4, 2021.

Claimant began her employment with this employer on June 26, 2020. She was hired as an “as needed” caregiver. Her job duties included providing direct care to individuals at their homes. Claimant was not guaranteed a certain number of hours to work per week and was able to pick up shifts as the employer had them available. Claimant only worked for this employer in June of 2020 and again for three hours in August of 2020. Claimant was also employed at employer REM Iowa Community Services Inc. at this time and her employment with this employer was supplemental to her regular employment with REM Iowa Community Services Inc. Claimant had no further hours with the employer between August of 2020 and when she attended orientation again on June 24, 2022.

Claimant’s administrative records establish the following wage earnings during the claim’s base period: Third Quarter of 2019: \$0.00; Fourth Quarter of 2019: \$5762 from REM Iowa Community Services Inc.; First Quarter of 2020: \$7,113.00 from REM Iowa Community Services Inc.; Second Quarter of 2020: \$4,978.00 from REM Iowa Community Services Inc. The lag quarter in the Third Quarter of 2020 establishes wages of \$6,805.00 from REM Iowa Community Services Inc and \$57.00 from this employer.

Claimant’s administrative records establish that she filled the following weekly-continued claims with the following reported earnings and benefits paid on her account:

Week-ending 10/31/2020 reported wages of \$192.00 and was paid benefits of \$211.00
Week-ending 11/07/2020 reported wages of \$1.00 and was paid benefits of \$323.00
Week-ending 11/14/2020 reported wages of \$0.00 and was paid benefits of \$323.00
Week-ending 11/21/2020 reported wages of \$336.00 and was paid benefits of \$67.00
Week-ending 11/28/2020 reported wages of \$216.00 and was paid benefits of \$187.00
Week-ending 12/05/2020 reported wages of \$0.00 and was paid benefits of \$323.00
Week-ending 12/12/2020 reported wages of \$180.00 and was paid benefits of \$223.00
Week-ending 12/19/2020 reported wages of \$336.00 and was paid benefits of \$67.00
Week-ending 12/26/2020 reported wages of \$450.00 and was paid benefits of \$0.00
Week-ending 05/15/2021 reported wages of \$59.00 and was paid benefits of \$0.00
Week-ending 05/22/2021 reported wages of \$104.00 and was paid benefits of \$0.00
Week-ending 05/29/2021 reported wages of \$123.00 and was paid benefits of \$0.00
Week-ending 06/05/2021 reported wages of \$60.00 and was paid benefits of \$0.00
Week-ending 06/12/2021 reported wages of \$0.00 and was paid benefits of \$0.00
Week-ending 06/19/2021 reported wages of \$0.00 and was paid benefits of \$0.00
Week-ending 06/26/2021 reported wages of \$160.00 and was paid benefits of \$0.00

Week-ending 07/03/2021 reported wages of \$229.00 and was paid benefits of \$0.00
Week-ending 07/10/2021 reported wages of \$300.00 and was paid benefits of \$0.00
Week-ending 07/17/2021 reported wages of \$400.00 and was paid benefits of \$0.00
Week-ending 07/24/2021 reported wages of \$250.00 and was paid benefits of \$0.00
Week-ending 07/31/2021 reported wages of \$198.00 and was paid benefits of \$0.00
Week-ending 08/07/2021 reported wages of \$198.00 and was paid benefits of \$0.00
Week-ending 08/14/2021 reported wages of \$0.00 and was paid benefits of \$0.00
Week-ending 08/21/2021 reported wages of \$0.00 and was paid benefits of \$0.00
Week-ending 08/28/2021 reported wages of \$0.00 and was paid benefits of \$0.00
Week-ending 09/04/2021 reported wages of \$0.00 and was paid benefits of \$0.00

The claimant was paid benefits of \$0.00 beginning December 20, 2020 due to disqualification decisions rendered on her account. Claimant incorrectly reported \$1.00 in wages for the week-ending November 7, 2020 as she did not work that week due to being ill with COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the appeal should be considered timely. The administrative law judge finds that it shall be considered timely.

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 portion of this Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. The Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional.¹

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

Date of submission and extension of time for payments and notices.

(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 of 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. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

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.

¹ *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

In this case, the claimant never received the underlying decision from IWD denying her benefits due to her employment status with Davenport IA Homecare LLC. When she inquired about other decisions that denied her benefits, she was told by an IWD representative that the period to file an appeal had passed and there was nothing she could do. Her never receiving the initial decision, combined with her receiving inaccurate information from an IWD representative establishes that the appeal shall be considered timely, even though it was filed almost three years after its initial mailing date.

The next issue is whether the claimant's employment with this employer disqualified her from receipt of State of Iowa funded unemployment insurance benefits effective October 18, 2020. In order for a claimant to be eligible for regular State of Iowa funded unemployment insurance benefits, they must be able to and available for work (unless that requirement is waived). In 2020, the statute regarding being able to and available for work was as follows:

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 section 96.19, 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".

(emphasis added).

The statute regarding whether a claimant was totally, partially or temporarily unemployed in 2020 according to State of Iowa law was as follows:

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

Further, in this case, we are dealing with an employer who is a supplemental employer. Workers who are disqualified due to their employment status with a supplemental employer may still be eligible for unemployment insurance benefits so long as they have sufficient wages in their base period from other employers to be monetarily eligible, and remain otherwise eligible for benefits. Iowa Code § 96.5(12).

Iowa Code § 96.5(12) provided:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

12. *Supplemental part-time employment.* If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Admin. Code r. 871-23.43(4)a provided in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

In this case, this employer (Davenport IA Homecare LLC) was not even in the claimant's base period (2019/3 through 2020/2); therefore, any separation from employment is not disqualifying to the claimant and the employer's account is not chargeable for any benefits paid on the account. Even if this employer was in the claimant's base period, the claimant has sufficient other wages from REM Iowa Community Services Inc to establish her monetary eligibility.

However, as mentioned earlier in this decision, in order for a claimant to be eligible for State of Iowa funded unemployment insurance benefits, they must be able to and available for work. When claimant filed her weekly-continued claims for benefits between October 18, 2020 and November 14, 2020, she was ill with COVID-19 and unable to work for any employer. As such, she was not able to and available for work pursuant to Iowa Code § 96.4(3) and is not eligible for regular State of Iowa funded unemployment insurance benefits for the weeks between October 18, 2020 and November 14, 2020. However, Pandemic Unemployment Assistance

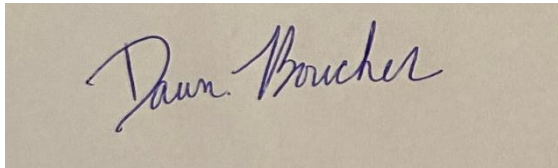
(PUA) and Federal Pandemic Unemployment Compensation (FPUC) benefits may be available to the claimant for that period of time. The matter of whether the claimant was eligible for PUA and FPUC benefits for the weeks of October 18, 2020 through November 14, 2020 while she was ill with COVID-19 and experiencing fever, cough and other COVID-19 symptoms will be remanded to IWD for an initial investigation and determination.

DECISION:

The appeal shall be considered timely. The December 31, 2020 (reference 02) unemployment insurance benefits decision is modified in favor of the appellant. Claimant was not able to and available for work from October 18, 2020 through November 14, 2020 due to her having COVID-19 and being ill. State of Iowa funded unemployment insurance benefits are denied pursuant to Iowa Code § 96.4(3) for the weeks between October 18, 2020 and November 14, 2020. Effective November 15, 2020, the claimant was able to and available for work. This employer was a non-base period supplemental employer and her employment status with this employer is not disqualifying pursuant to Iowa Code § 96.5(12). Regular, State of Iowa funded unemployment insurance benefits are allowed effective November 15, 2020 and continuing so long as the claimant remained otherwise eligible. This employer's account is not chargeable for any benefits paid to the claimant on this claim year as it is not a base period employer.

REMAND:

The issue of whether the claimant was eligible for PUA and FPUC benefits for the weeks between October 18, 2020 and November 14, 2020 due to her being ill with COVID-19 and being unable to work due to her COVID-19 symptoms is remanded to IWD for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

March 12, 2024
Decision Dated and Mailed

DB/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
Online: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.