

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA L EBERLING
Claimant

WALMART INC
Employer

APPEAL 20A-UI-08186-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1/R)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jessica Eberling (claimant) appealed a representative's May 15, 2020, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was not willing to work enough hours Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 9, 2018, as a part-time cashier in the employer's Waterloo, Iowa, location. The claimant commuted from her home in Vinton, Iowa. She had an automobile accident in 2019. She had numerous doctor's appointments and was absent due to frequent headaches. The claimant could not work all her scheduled hours.

The claimant decided to move to Cedar Rapids, Iowa, and take a job with the employer in that location. She told the employer she could not work from March 14, 2020, through July 21, 2020, because of her health. Additionally, she said she could not commute and she was moving. The claimant also was a part-time student at Capri College in Cedar Rapids, Iowa.

The claimant returned to work and performed services at the Cedar Rapids, Iowa, location starting on July 22, 2020. She worked until August 7, 2020. Then the claimant stopped working because she had headaches and felt too sick to work. She did not have a doctor's note restricting her from working. She has been on leave since August 8, 2020.

A disqualification decision was mailed to the claimant's last known address of record on May 15, 2020. The decision was not received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 26, 2020. The claimant learned of the decision in early July 2020. The appeal was not filed until July 6, 2020, which is after the date noticed on the disqualification decision.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$161.00. The claimant received benefits of \$161.00 per week from March 29, 2020, to the week ending May 9, 2020. This is a total of \$966.00 in state unemployment insurance benefits after the separation from employment. She also received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending May 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The claimant 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision as soon as she discovered it. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work. The administrative law judge concludes she is not.

Iowa Admin. Code r. 871-24.23(1), (4) and (10) provide:

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.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. Likewise, when they lack transportation to employment, or on a medical leave, they are not able and available for work. The claimant was sick. She did not want to commute to her job. The claimant requested a medical leave of absence. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from March 15, 2020. The claimant is not able and available for work.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

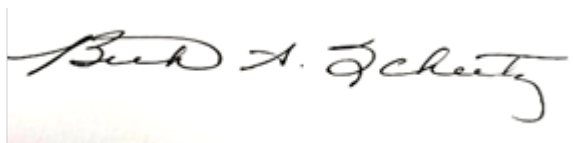
The issue of whether the claimant is overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

DECISION:

The May 15, 2020, reference 03, decision is affirmed. The appeal in this case was timely. The claimant is not able and available for work and not eligible to receive unemployment insurance benefits as of March 15, 2020.

The issue of whether the claimant is overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

August 26, 2020
Decision Dated and Mailed

bas/scn