

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOLLY GRAFT

Claimant

MERCY MEDICAL CENTER

Employer

APPEAL 21A-UI-10919-SN-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 04/19/21
Claimant: Appellant (2R)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

On April 9, 2021, Molly Graft (claimant/appellant) filed an appeal from the March 11, 2021, reference 01, unemployment insurance decision that denied benefits effective April 4, 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2021, at 3:00 p.m. The claimant participated and testified. Registered Nurse Emily McShane provided testimony in support of the claimant. The employer did not participate. Exhibits D-1, D-2, A, B and C were received into the record. Official notice was taken of the administrative record.

ISSUES:

Whether the claimant's appeal is timely? Where there are other reasonable grounds to consider it as timely?

Whether claimant is totally, partially or temporarily unemployed?

Whether claimant is able to and available for work?

Whether claimant is still employed at the same hours and wages?

Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment with the employer, Mercy Medical Center, in March 2017. Claimant is a full-time surgical technologist, working an average of 40 to 60 hours per week. Claimant's hourly wage is \$19.

Beginning with the week ending March 6, 2020, the employer had reduced hours for the claimant after the onset of the Covid19 pandemic because her department was dedicated to elective surgeries. The demand for elective surgeries was severely impacted by Covid19. The employer gave employees to work in other areas of its organization, but the claimant was limited

in the opportunities she could take because it had not issued her an N95 mask which was required for those areas. The claimant's part-time employer, HuHot Mongolian Grill, shut down its operations due to the pandemic the week ending March 21, 2020. The claimant was not brought back on because management there wanted to give its limited hours back to full time staff. The claimant filed an initial claim for unemployment insurance benefits effective April 19, 2020.

Claimant's weekly benefit amount is \$518.00. The claimant filed weekly claims from the week ending April 25, 2020 to the week ending July 25, 2020. The following timeline is generated from the claimant's reported earnings in the administrative record DBRO.

For the week ending April 25, 2020, the claimant earned \$0.00.

For the week ending May 2, 2020, the claimant earned \$0.00.

For the week ending May 9, 2020, the claimant earned \$476.00.

For the week ending May 16, 2020, the claimant earned \$391.00.

For the week ending May 23, 2020, the claimant earned \$391.00.

For the week ending May 30, 2020, the claimant earned \$680.00.

For the week ending June 6, 2020, the claimant earned \$561.00.

For the week ending June 13, 2020, the claimant earned \$663.00.

For the week ending June 20, 2020, the claimant earned \$324.00.

For the week ending June 27, 2020, the claimant earned \$306.00.

For the week ending July 4, 2020, the claimant earned \$629.00.

For the week ending July 11, 2020, the claimant earned \$590.00.

For the week ending July 18, 2020, the claimant earned \$799.00.

For the week ending July 25, 2020, the claimant earned \$680.00.

The administrative record Wage-A shows the claimant's base period spans from the first quarter of 2019 to the fourth quarter of 2019. The employer and CCW LLC are represented in each four quarters of the claimant's base period.

A disqualification decision was mailed to claimant's last known address of record on March 11, 2021. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 21, 2021. (Exhibit D-1) The claimant attempted to mail in an appeal on March 18, 2021, but it was not received by Iowa Workforce Development. The claimant filed an appeal through Iowa Workforce Development's Online Appeal portal on April 9, 2021, after being informed by a representative that the appeal she sent on March 18, 2021 had not been received. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal has reasonable grounds to be considered otherwise timely. The administrative law judge concludes the claimant was partially / totally unemployed and able and available for the weeks ending April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, June 20, 2020, and June 27, 2020. The administrative law judge concludes the claimant was not unemployed for the weeks ending May 30, 2020, June 6, 2020, June 13, 2020, July 4, 2020, July 11, 2020, July 18, 2020 and July 25, 2020.

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 issuing 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 claimant received the disqualifying decision on time. However, the claimant's appeal that she sent by mail within the time prescribed was lost in the mail. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant followed up with Iowa Workforce Development regarding her first appeal and filed a second appeal immediately when she learned her first appeal had not been received.

The next issue is whether the claimant the claimant was totally, partially or temporarily unemployed, and able and available for work effective April 4, 2020.

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 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".

Iowa Admin. R. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the

employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

As an initial matter, the administrative law judge finds Iowa Admin. R. 871-24.23(26) inapplicable because the claimant's regular job had reduced hours rather than her part-time supplemental employer. Iowa Admin. R. 871-24.23(26) is inapplicable to full-time work. The administrative law judge is satisfied with the claimant's answers regarding her ability to and availability to work for the period she made weekly claims.

The claimant was totally unemployed for the weeks ending April 25, 2020 and May 2, 2020. Benefits are granted regarding these weeks.

To be partially unemployed for any given week, claimant must work less than 40 hours per week (claimant's regular full-time schedule) and earn less than \$533.00 (claimant's weekly benefit plus \$15). Because the claimant has earned more than \$518.00 weekly benefit amount plus \$15.00 for the weeks ending May 30, 2020, June 6, 2020, June 13, 2020, July 4, 2020, July 11, 2020, July 18, 2020 and July 25, 2020, she was not partially unemployed for these weeks. Benefits are denied regarding these weeks.

Because the claimant earned less than \$518.00 weekly benefit amount plus \$15.00 for the weeks ending May 9, 2020, May 16, 2020, May 23, 2020, June 20, 2020, and June 27, 2020, she was partially unemployed for these weeks. Benefits are granted regarding these weeks.

DECISION:

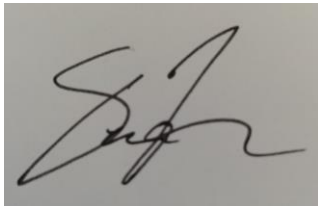
The March 11, 2021, reference 01, unemployment insurance decision is affirmed in part and reversed in part.

The claimant was totally unemployed or partially unemployed and able and available for work for the weeks ending April 25, 2020, May 2, 2020, May 9, 2020, May 16, 2020, May 23, 2020, June 20, 2020, and June 27, 2020. Benefits are granted regarding the weeks above.

The claimant was not unemployed for the weeks ending May 30, 2020, June 6, 2020, June 13, 2020, July 4, 2020, July 11, 2020, July 18, 2020 and July 25, 2020. Benefits are denied for these latter weeks.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the claimant's request to backdate her claims to March 6, 2020 to decide within its own discretion.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

August 12, 2021
Decision Dated and Mailed

smn/mh