

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYLER BALLARD
Claimant

APPEAL 20A-UI-09332-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On August 5, 2020, the claimant filed an appeal from the June 25, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2020. Claimant participated. Employer participated through unemployment claims coordinator Julie Mansfield. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 25, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision denying benefits to claimant's last address of record. The decision warned that an appeal was due by July 5, 2020. Claimant did not receive the decision. During the first week of August 2020, claimant began to wonder what was going on with his unemployment insurance benefits and called Iowa Workforce Development. At that time, claimant was informed he had been denied benefits and needed to file an appeal. Claimant filed the appeal on August 5, 2020.

Claimant has worked for employer since January 10, 2020. Most recently, claimant works for employer as a full-time maintenance II technician.

In March 2020, the United States declared a public health emergency as a result of the COVID 19 pandemic. As of April 19, 2020, employer required employees at the location where claimant worked to wear a mask while working.

Claimant has a history of brain aneurysm and has been diagnosed with asthma. Claimant's doctor wrote him a note stating that for every 10 minutes he wore a mask, employer should give him a 10 minute break. Claimant gave the note to employer. Initially, employer accommodated the restriction by giving claimant outdoor and driving duties he could perform without wearing a mask. Employer was only able to give claimant part-time hours under this arrangement. At the end of June 2020, employer recommended claimant take a leave of absence instead. As of the end of June 2020, claimant has been on a leave of absence.

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 § 96.6(2) provides, in pertinent part:

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. . . . 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.

The claimant did not have an opportunity to timely 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 is whether claimant is able to and available for work.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Here, claimant has a non-work related medical condition. His treating medical professional has released him to work with restrictions. Employer initially accommodated those restrictions, but now does not have the work available and/or chooses not to continue to do so. Claimant has established his ability and availability for work with restrictions. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 25, 2020, (reference 01) unemployment insurance decision is reversed. The appeal is timely. Claimant is able to and available for work effective April 19, 2020. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

September 24, 2020
Decision Dated and Mailed

cal/mh