

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHANTE L EASON
Claimant

EJG MANAGEMENT LLC
Employer

APPEAL 17A-UI-06042-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/07/17
Claimant: Appellant (2R)

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(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 2, 2017, (reference 02) unemployment insurance decision that denied benefits based upon claimant's unavailability for work while on a voluntary leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on June 27, 2017. The claimant participated and testified. The employer participated through District Manager Holly Anderson and Manager Tabatha Bond. Department's Exhibit D-1 and claimant's Exhibit A were received into evidence.

ISSUES:

Is the appeal timely?

Is the claimant able to work and available for work effective May 7, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification unemployment insurance decision was mailed to the claimant's last known address of record on June 2, 2017. Claimant received the decision in the mail on Friday, June 9, 2017 after business hours. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 12, 2017. Claimant testified she went into her local office around 4:00 p.m. on June 12, 2017 to submit her appeal. Claimant further testified she gave her appeal letter to a worker in the local office and assumed she submitted the appeal the same day. The date on the signature line is dated June 13, 2017, but claimant testified she did not fill out the date line next to the signature. Nothing is written in the upper right-hand box reserved for the agency to notate the date the appeal was received or the name of the claimstaker. The fax stamp on the appeal is dated June 13, 2017 at 1:24 p.m. Claimant testified she was fairly certain that was not the date or time she went into her local office and that she believed they may have waited a day to send it in.

Both parties agree claimant was never on a voluntary leave of absence. According to claimant, she was not scheduled to work from May 7, 2017 through May 18, 2017 because the employer told her she was on a disciplinary suspension. The employer agreed claimant did not work May 7 through 18, but testified this was because she had requested May 11 off and they did not have hours available during the remainder of this time. According to the employer claimant's suspension was from April 26 through May 2, 2017. Both parties agree the disciplinary suspension and/or availability of hours were the only things preventing claimant from working during this time. Claimant testified she would have been able to and available for work all of her normal hours had the employer scheduled her.

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:

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, subsection 10, 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.

Claimant provided credible testimony that she did not receive notice of the fact-finding decision until after the close of business on Friday, June 9 and that she went it to her local office to submit her appeal during business hours on June 12, 2017. This is within the appeals period. Even if claimant did not file her appeal until June 13, 201, this is still within a reasonable period of time after discovering the disqualification. Without timely 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 appellant filed the appeal within one to two business days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able to and available for work effective May 7, 2017. For the reasons that follow, the administrative law judge concludes she is.

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", 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. Code r. 871-24.22(2)(1), (2) 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.

(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

Both parties agree claimant was never on a voluntary leave of absence. No evidence was provided that indicates claimant was otherwise unable to or unavailable for work. Accordingly, benefits are allowed on this basis, provided claimant is otherwise eligible.

There is a dispute, however, as to why claimant was not working from May 7 through 18, 2017. The claimant testified she was suspended during this time, but the employer testified work was not available. These issues must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

DECISION:

The June 2, 2017, (reference 02) decision is reversed. The claimant's appeal is timely. Claimant was never on a voluntary leave of absence and was able and available for work effective May 7, 2017. Benefits are allowed, provided she is otherwise eligible. Any benefits withheld on this basis shall be paid.

REMAND:

The issues regarding claimant's possible disciplinary suspension and/or partial unemployment from May 7, 2017 through May 18, 2017 are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs