

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL F WELLS

Claimant

APPEAL 21A-UI-01639-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS IA HOMECARE LLC

Employer

OC: 03/15/20

Claimant: Appellant (1/R)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Crystal Wells (claimant) appealed a representative's July 6, 2020, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits as of April 26, 2020, because a leave of absence was granted by Cedar Rapids IA Homecare (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 23, 2021. 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.

Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-01639.S1 and 20A-UI-01640.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer hired the claimant in December 2018, as a full-time caregiver. Her client ended the claimant's services as of March 25, 2020. On March 26, 2020, the employer did not have other work available. For the week ending April 4, 2020, the employer offered the claimant two eight or twelve-hour shifts but the claimant refused the work. On April 6, 2020, the claimant told the employer she was sick and unable to work. She continues to be unwell and unable to work.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$518.00. The employer protested benefits as of April 26, 2020. The claimant received a total of \$2,391.00 in state unemployment

insurance benefits after the separation from employment. She has also received Federal Pandemic Unemployment Compensation and Lost Wage Assistance. The claimant was allowed Pandemic Unemployment Assistance in a decision dated July 20, 2020

A disqualification decision was mailed to the parties' last known address of record on July 6, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 16, 2020. The appeal was filed July 9, 2020. Only the confirmation of appeal was received by the Agency, not the appeal itself and it did not recognize it as an appeal. The claimant filed an appeal again on December 12, 2020, when she received the overpayment decision.

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 claimant appealed within the time allowed by law. Therefore, the appeal shall be accepted as timely.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(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.

Iowa Admin. Code r. 871-24.23(1) 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.

(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.

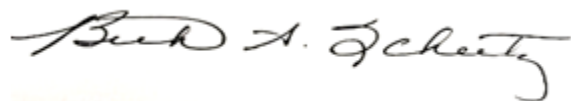
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence. The claimant is still unable to work because she is still ill. She is not eligible to receive unemployment insurance benefits from April 26, 2020.

The issue of whether claimant has been overpaid Federal Pandemic Unemployment Compensation, Lost Wage Assistance is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The July 6, 2020, reference 03, decision is affirmed. The appeal in this case was timely. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 26, 2020.

The issue of whether claimant has been overpaid Federal Pandemic Unemployment Compensation, Lost Wage Assistance is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Beth A. Scheetz
Administrative Law Judge

March 3, 2021
Decision Dated and Mailed

bas/lj