

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELVA S BANTER
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL 21A-UI-16803-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1R)

Iowa Code § 96.1A(37) – 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
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 11, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2021, at 1:00 p.m. Claimant participated. Employer participated through Zachary Myer, Human Resources Specialist. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
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 the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on September 11, 2020. Claimant does not recall whether she received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 21, 2020. Claimant appealed a subsequent overpayment decision via mail on June 1, 2021, as evidenced by the post mark. Claimant's appeal was received by Iowa Workforce Development on June 2, 2021. Claimant gave no reason for the delay in submitting the appeal.

Claimant is employed as an on-call Certified Nurse Assistant (CNA) and Certified Medical Assistance (CMA). Claimant is not guaranteed a minimum number of hours and has the ability to accept or decline assignments. Since the pandemic began, claimant has worked fewer hours

per week because her doctor advised her to limit exposure to Covid-19 due to her underlying medical conditions. As a result, claimant was unavailable for assignments in facilities that had positive Covid-19 cases. Claimant also quarantined for 14 days when she was exposed to Covid-19.

Claimant filed her initial claim for unemployment insurance (UI) benefits effective May 10, 2020. On September 11, 2020, claimant was found ineligible for UI benefits. Claimant applied for Pandemic Unemployment Assistance. On September 21, 2020, a decision was issued finding claimant was eligible for PUA effective August 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa

1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion? *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not appeal the decision until after the deadline. Claimant has not established that her delay was due to agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

Even if the appeal was timely, for the reasons that follow, the administrative law judge would affirm the decision denying benefits finding that claimant was not totally or partially unemployed and was not able to and available for work.

Iowa Code section 96.1A(37) 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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. 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 different from the contract for hire, such claimant cannot be considered partially unemployed.

Claimant was hired as an on-call employee. Claimant has been employed in that same capacity since filing her initial claim for benefits. Therefore, claimant is not partially unemployed. Furthermore, claimant has not established that she was able to and available for work because she restricted her availability for work based upon her doctor's advice to not work in a facility with positive Covid-19 cases. Accordingly, even if claimant's appeal was timely, the administrative law judge would affirm the decision denying benefits.

The issue of whether claimant's PUA eligibility should be backdated from August 2, 2020 to May 10, 2020 should be remanded to the Benefits Bureau of Iowa Workforce Development for review.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 11, 2020 (reference 01) unemployment insurance decision is affirmed.

REMAND:

The issue of whether claimant's PUA eligibility date should be backdated to May 10, 2020 is remanded to the Benefits Bureau of Iowa Workforce Development for review.



Adrienne C. Williamson
Administrative Law Judge
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September 17, 2021
Decision Dated and Mailed

acw/mh