

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SELAM BEYEN MAHARI**  
Claimant

**APPEAL 21A-UI-02629-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RACCOON VALLEY MANAGEMENT LLC**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (5)**

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Iowa Code § 96.4(3) – Able to Work and Available for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 28, 2020 (reference 03) unemployment insurance decision that denied benefits to the claimant based upon a voluntarily leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on March 10, 2021. The claimant participated personally. Fitsum Abraha-Amene participated as a witness for the claimant. The employer participated through witness Jen Carter. Claimant's Exhibits A, B, C, and D were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-02630-DB-T.

**ISSUES:**

Is the appeal timely?  
Was the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated July 28, 2020 (reference 03) was mailed to the claimant's correct address of record. The decision found that the claimant was denied regular unemployment insurance benefits funded by the State of Iowa due to her voluntarily leave of absence from work. The claimant received the decision in the mail. She contacted an Iowa Workforce Development (IWD) representative who told her to file for Pandemic Unemployment Assistance (PUA) benefits. The claimant did not file an appeal until January 4, 2021.

Claimant was employed part-time as a crewmember at the employer's fast-food restaurant. Her employment began on December 2, 2019 and ended on April 16, 2020 when she told the manager she was voluntarily quitting. Claimant had medical conditions and her children were out of school due to the COVID-19 pandemic. The claimant voluntarily quit her position in order to care for her children at home and to self-quarantine. She is still quarantining at this time due to her continued medical conditions and fear of contracting COVID-19.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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

Date of submission and extension of time for payments and notices.

(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.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant contacted an IWD representative and was instructed to file an application for PUA benefits. As such, the delay in her filing an appeal was due to division error or misinformation and her appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2).

The next issue is whether the claimant has been able to and available for work under Iowa law. The administrative law judge finds that she has not been.

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", subparagraph (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) 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.

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

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.

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

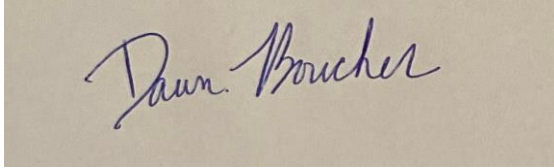
Iowa Admin. Code r. 871—24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Claimant credibly testified that she has not been able to and available for work because she has been self-quarantining. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective April 12, 2020.

**DECISION:**

The appeal is considered timely. The July 28, 2020 (reference 03) unemployment insurance decision is modified with no change in effect. The claimant was not able to and available for work pursuant to Iowa law effective April 12, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant establishes that she is able to and available for work, and provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

March 12, 2021  
Decision Dated and Mailed

db/lj

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and if you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits. **If you have been denied PUA benefits you will need to file a separate appeal from the PUA denial decision.**