

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBIN L BRADY
Claimant

WALMART INC
Employer

APPEAL 20A-UI-06580-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1/R)

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

STATEMENT OF THE CASE:

Robin Brady (claimant) appealed a representative's May 21, 2020, decision (reference 02) that denied benefits because she was still employed with Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2020. The claimant participated personally. The employer provided a telephone number for the hearing. The administrative law judge spoke to the person registered. She said she did not wish to participate because she did not know the claimant and was no longer in human resources.

Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner, whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 31, 2019, as a full-time on-line grocery picker. On March 18, 2020, the claimant's doctor wrote a note stating the claimant was a patient and was at increased risk. Due to her health concerns and Covid-19, the claimant asked for a leave of absence starting March 19, 2020. On July 1, 2020, the claimant resigned because she felt she would not be able to return to work. She did not have a doctor's note saying she could not work.

A disqualification decision was mailed to the claimant's last known address of record on May 21, 2020. The claimant did not receive the decision until approximately June 19, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 1, 2020. The appeal was not filed until June 20, 2020, which is after the date noticed on the disqualification decision.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. She reopened her claim on July 12, 2020. Her weekly benefit amount was determined to be \$256.00. The claimant received benefits of \$256.00 per week from March 22, 2020, to the week ending May 16, 2020. This is a total of \$2,048.00 in state unemployment insurance benefits after the separation from employment. She also received \$4,200.00 in federal pandemic unemployment compensation for the seven-week period ending May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 did not have an opportunity to 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work.

Iowa Code section 96.19(38) 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 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.

The employer had work available for claimant. However, the claimant informed the employer she was unable to work due to her health concerns and Covid-19. The employer agreed to allow the claimant time off for that reason. The claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. The claimant is considered to be unable to work due to her health and is not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she

is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

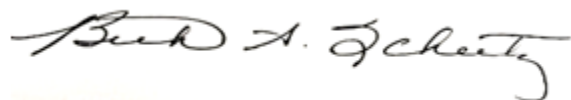
The issues of the claimant's separation from employment and the overpayment of unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

DECISION:

The May 21, 2020, reference 02, decision is affirmed. The appeal in this case was timely. The claimant is not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issues of the claimant's separation from employment and the overpayment of unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded for determination.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

bas/mh