

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW T LANDHOLM
Claimant

SCE PARTNERS LLC
Employer

APPEAL 22A-UI-08996-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/12/19
Claimant: Appellant (4R)

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 June 15, 2020 (reference 05) unemployment insurance decision that denied benefits finding claimant was still employed the same hours and wages. The parties were properly notified of the hearing. A telephone hearing was held on May 24, 2022. Claimant participated. Employer participated through Rachel Parmelee, Director of Human Resources. Claimant's Exhibit A was 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 June 15, 2020. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 25, 2020. Claimant learned of the disqualifying decision when he received overpayment decisions dated April 5, 2022. Claimant appealed the decisions via e-mail on April 11, 2022. Iowa Workforce Development (IWD) received the appeal on April 11, 2022.

Claimant began employment with SCE Partners, d/b/a Hard Rock Hotel & Casino, on September 18, 2019. Claimant was a part-time Table Games Dealer, working an average of 21 hours per week. Claimant earned \$5.44 per hour plus tips. Employer closed due to Covid-19 on March 19, 2020. On November 9, 2020, employer terminated claimant's employment due to lack of work. Claimant performed no work for employer from March 19, 2020 through November 9, 2020. Employer paid claimant his average weekly earnings (including tips) from March 19, 2020 until April 15, 2020.

Claimant filed an initial claim for unemployment insurance benefits effective May 12, 2019 and an additional claim effective March 15, 2020 when he stopped performing work for employer. Claimant's weekly benefit amount is \$467.00. Claimant filed weekly claims from March 15, 2020 through May 9, 2020 when his benefit year expired. Claimant reported no wages on his weekly claims during that period. Claimant had no barriers to employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 receive the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed his appeal promptly upon learning of the decision denying benefits. Claimant's appeal is considered timely.

The next issues to be determined are whether claimant was totally, partially or temporarily unemployed, whether claimant was still employed at the same hours and wages and whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes:

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", 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. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

From March 15, 2020 through April 15, 2020, claimant performed no work but received his regular wages. Therefore, claimant was not unemployed and is not eligible for benefits. Benefits are denied.

Effective April 16, 2020, claimant performed no work for employer and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that he was able to and available for work. Claimant had no barriers to employment. Therefore, claimant was able to and available for work and, thus, is entitled to benefits. Benefits are allowed provided claimant is otherwise eligible.

The next issue to be determined is whether employer's account is subject to charge. For the reasons that follow, the administrative law judge concludes:

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

DECISION:

The appeal is timely. The June 15, 2020 (reference 05) unemployment insurance decision is modified in favor of appellant.

Claimant was not unemployed from March 15, 2020 through April 15, 2020; benefits are denied March 15, 2020 through April 11, 2020.

Claimant was totally unemployed and able to and available for work effective April 16, 2020; benefits are allowed effective April 12, 2020 provided claimant is otherwise eligible.

REMAND:

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
Administrative Law Judge
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June 7, 2022
Decision Dated and Mailed

acw/ACW