

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KHADIJAH RUNNELS

Claimant

APPEAL 21A-UI-12121-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC

Employer

OC: 01/17/21

Claimant: Appellant (4)

Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On May 6, 2021, the claimant, Khadijah Runnels, filed an appeal from the April 14, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in the contract of hire and was not eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Thursday, July 22, 2021. The claimant, Khadijah Runnels, participated. The employer, Walmart, Inc., sent in written notice that it would not be participating in the hearing. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the appeal timely?

Is the claimant totally, partially, or temporarily unemployed?

Is 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: Claimant began her employment with Walmart, Inc., on June 4, 2019. Claimant was employed and working full-time hours most recently as an overnight stocker until March 16, 2021. Claimant then separated from employment. Claimant has been found eligible for benefits based on the March 16, 2021, separation from employment in the agency's reference 02 decision.

Claimant opened a claim for unemployment insurance benefits with an effective date of January 17, 2021, and she filed weekly continued claims for benefits for the four-week period ending February 13, 2021. Claimant explained that during this period, her hours were being cut by the employer. Each week, claimant reported wages in excess of her weekly benefit amount (\$285.00) plus \$15.00 and therefore she did not receive any benefits for any of those four weeks.

Claimant resumed filing for unemployment insurance benefits with an additional claim date of March 14, 2020. For the one-week period ending March 20, 2021, claimant reported \$20.00 in wages. She did not report any wages for any week going forward, as she was totally unemployed.

Since separating from Walmart, Inc., claimant was hired by JBS. She completed orientation and was supposed to start working for that employer. However, she experienced a death in her immediate family and was unable to move forward with that employment.

A disqualification decision was mailed to claimant's last known address of record on April 14, 2021. She did receive the decision, though she does not recall exactly when she received it. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 24, 2021. The appeal was not filed until May 6, 2021, which is after the date noticed on the disqualification decision. Claimant explained that instead of immediately pursuing an appeal, she was trying to contact a fact-finder to hold the fact-finding interview again, as she never received a call for that interview. She was able to reach someone at the agency, who notified her that she would receive a second call, but she still did not receive the call.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the underlying decision is modified in favor of claimant.

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

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). 00194 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 claimant's failure to file an appeal within the appeal period was in part because of incorrect information received from an IWD customer service advisor. When claimant contacted the agency and requested a second fact-finding interview, she was told this was a possibility to pursue. Therefore, claimant further delayed filing her appeal. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). For this reason, the appeal shall be accepted as timely.

Iowa Code § 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", unnumbered paragraph (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 Code § 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(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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has not performed services or earned wages for any week she claimed benefits beginning on March 21, 2021. Effective March 21, 2021, claimant was totally unemployed.

The next question is whether, during any relevant period, claimant was partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

Here, claimant filed for partial unemployment benefits during the four-week period ending February 13, 2021. However, during each of those weeks, she earned more than her weekly benefit amount plus fifteen dollars. Therefore, claimant would not be eligible for partial unemployment benefits for those weeks.

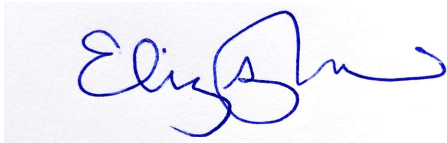
Claimant also effectively filed for partial unemployment benefits when she filed her claim for the week ending March 20, 2020, and reported \$20.00 in wages. Claimant was separated from employment that week and was only allowed to work minimal hours before her separation on March 16. Claimant is eligible for partial unemployment benefits for the week ending March 20, 2020.

DECISION:

The April 14, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant.

Claimant was partially unemployed for the one-week period ending March 20, 2021. Benefits are allowed, provided she is otherwise eligible.

Claimant was totally unemployed effective March 21, 2021. Benefits are allowed, provided she is otherwise eligible.



Elizabeth A. Johnson
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July 29, 2021
Decision Dated and Mailed

lj/kmj