

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIE E OTTO
Claimant

APPEAL 22A-UI-05950-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/15/20
Claimant: Appellant (5)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(3) – Appeals
Iowa Admin. Code r. 871-24.28 – Previous Adjudication
Iowa Code § 96.4(3) – Eligibility – Able and Available for Work

STATEMENT OF THE CASE:

On March 6, 2022, Marie Otto (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated February 23, 2022 (reference 01) that determined claimant was not eligible for unemployment insurance benefits based on a finding that a decision on the separation was made on a prior claim and remained in effect.

A telephone hearing was held on April 18, 2022. The parties were properly notified of the hearing. Claimant participated personally. Casey’s Marketing Company (employer/respondent) did not appear or participate.

Claimant’s Exhibits 1-3 were admitted. Official notice was taken of the administrative record. The record from a related matter, 21A-UI-13437-AD-T, was incorporated herein.

ISSUE:

Was the claimant able to and available for work?

Was there a disqualifying separation from employment?

Was the issue previously adjudicated?

Was the appeal timely?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

Claimant began working for employer on March 3, 2020. Claimant filed an original claim for benefits with an effective date of March 15, 2020. Claimant filed a weekly claim for benefits each week from the benefit week ending March 21, 2020 and continuing through the benefit week ending March 13, 2021.

Claimant's doctor advised her not to work effective March 19, 2020 and continuing through that claim year because her age and health issues made her particularly susceptible to COVID-19. Claimant shared this information with employer and heeded her doctor's advice. She was therefore unavailable for work effective March 19, 2020 and continuing through that claim year.

Employer initially agreed to place claimant on leave consistent with her doctor's advice. However, when after approximately seven months claimant had not been released and continued to make herself unavailable for work, it determined it could not continue the leave. The employment relationship was terminated at the end of October 2020.

An unemployment insurance benefits decision was issued on August 9, 2021 (reference 01) for the claim year effective March 14, 2021. See 21A-UI-13437-AD-T. That decision found claimant ineligible for benefits effective March 14, 2021. Claimant's eligibility for benefits in the claim year effective March 15, 2020 was not adjudicated in that matter.

REASONING AND CONCLUSIONS OF LAW:

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

There are two matters to be addressed initially. First, the administrative law judge finds claimant's appeal was timely. The decision denying benefits was dated February 23, 2022. The deadline to appeal was March 5, 2022. Because that day was a Saturday, the deadline was extended to Monday, March 7, 2022. Claimant appealed online on March 6, 2022. This was within the timeframe to appeal.

Second, the administrative law judge finds the issue of claimant's eligibility for benefits in the benefit year effective March 15, 2020 was not previously adjudicated. The August 9, 2021 (reference 01) decision only addressed claimant's eligibility in the claim year effective March 14, 2021.

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", 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 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.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

The administrative law judge finds claimant and employer essentially agreed to a leave of absence from the benefit week ending March 21, 2020 and continuing through the benefit week ending October 31, 2020. Claimant was not available for work and thus ineligible for benefits during this time.

At that point employer determined it could not continue claimant's leave and the employment relationship ended. The relationship ended due to claimant failing to return to work. Claimant did not return due to her age and health issues which made her particularly susceptible to COVID-19, which is akin to leaving due to illness. While the administrative law judge understands why claimant did not return, it was still a voluntary determination that she made and it was not for good cause attributable to employer. She is therefore disqualified from benefits effective October 31, 2020 based on the separation from employment.

While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

DECISION:

The decision dated February 23, 2022 (reference 01) that determined claimant was not eligible for unemployment insurance benefits based on a finding that a decision on the separation was made on a prior claim and remained in effect is MODIFIED with no change in effect.

Claimant was not available for work and was therefore ineligible for benefits from the benefit week ending March 21, 2020 and continuing through the benefit week ending October 31, 2020. She was disqualified from benefits after that date due to voluntarily leaving without good cause attributable to employer.



Andrew B. Duffelmeyer
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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 and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.