

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BROOKLYN N LARSON
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 21A-UI-20704-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 2, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her being not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2021. The claimant participated personally. The employer did not participate. Claimant's Exhibits A, B, C, and D were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-20707-DB-T and 21A-UI-20709-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 November 2, 2020 (reference 01) that found the claimant was not eligible for benefits was mailed to the claimant's address of record. Claimant received it in the mail. Claimant filed an appeal on September 16, 2021 after receiving notification of being overpaid benefits. Claimant did not file an appeal in November of 2020 because she was told to file a claim for Pandemic Unemployment Assistance (PUA) benefits instead.

For two weeks in August of 2020, from approximately the week-beginning August 16, 2020 through the week-ending August 29, 2020, the claimant was not working due to being exposed to COVID-19 and quarantining for a two-week period.

Claimant filed an application for PUA benefits on November 14, 2020 at 11:53 p.m.; however, no decision whether the claimant was eligible for PUA or not was issued by Iowa Workforce Development. The issue of whether the claimant was eligible for PUA benefits pursuant to her application filed on November 14, 2020 will be remanded for an initial determination.

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 filed an appeal after the deadline to do so because she was informed by IWD to file an application for PUA benefits instead. As such, her appeal shall be considered timely.

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

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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.

Because the claimant was quarantining due to potential COVID-19 exposure from approximately August 16, 2020 through August 29, 2020, she was not able to and available for work. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective August 16, 2020.

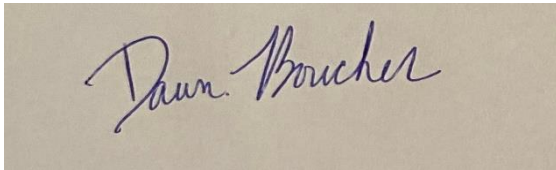
This decision does not impact whether the claimant may be eligible for Federal Pandemic Unemployment Assistance (PUA) benefits. The claimant's application that she filed on November 14, 2020, shall be reviewed and a determination on eligibility shall be made.

DECISION:

The appeal shall be considered timely. The November 2, 2020 (reference 01) decision is affirmed. Claimant was not able to and available for work pursuant to Iowa Code § 96.4(3) as she was quarantining due to a COVID-19 exposure. Regular unemployment insurance benefits funded by the State of Iowa are denied effective August 16, 2020.

REMAND:

The issue of whether the claimant was eligible for PUA benefits effective August 16, 2020 and according to the PUA application she filed on **November 14, 2020**, is remanded to the Benefits Bureau for an initial review and determination.



Dawn Boucher
Administrative Law Judge

December 15, 2021
Decision Dated and Mailed

db/mh