

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GALE G ZIESE
Claimant

LEROYS22 INC
Employer

APPEAL 20A-UI-13914-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

On November 3, 2020, the claimant filed an appeal from the June 17, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 6, 2021. Claimant participated. Employer participated director Carrie Hill. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 17, 2020, Iowa Workforce Development (IWD) mailed a reference 01 unemployment insurance decision denying benefits to claimant's last address of record. The decision warned that an appeal was due by June 27, 2020. Claimant filed an appeal on June 27, 2020. It was not received by IWD. On October 27, 2020, IWD mailed claimant a reference 02 unemployment insurance decision that found her overpaid unemployment insurance benefits. Claimant timely appealed that decision.

Claimant began working for employer in 2007. Claimant works for employer as a full-time daycare teacher. In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic.

Claimant requested a leave of absence from March 30, 2020, until May 1, 2020. Employer granted the request.

Claimant worked reduced hours the week ending May 30, 2020, because census was low at the daycare due to the pandemic.

Claimant filed an application for PUA benefits on April 22, 2020, but has not yet received a decision on her application.

REASONING AND CONCLUSIONS OF LAW:

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:

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. . . . 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.

The claimant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from March 29, 2020, through May 1, 2020.

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.

Here, claimant was on a leave of absence due to health conditions. Claimant has not established she is able to and available for work from March 29, 2020, through May 1, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of her claim.

The claimant is eligible for regular unemployment insurance benefits for the one week ending May 30, 2020, as she was available for work, but employer did not have full-time work available for her due to business conditions caused by the pandemic. Because the business conditions were caused by the pandemic, the employer will not be charged for unemployment insurance benefits for that week, in accordance with the policy announced by Iowa Workforce Development when the pandemic began.

DECISION:

The June 17, 2020, (reference 01) unemployment insurance decision is modified in favor of claimant. The claimant is not eligible for unemployment insurance benefits from March 29, 2020, through May 1, 2020, as she was on a voluntary leave of absence and was not available for work. Claimant may be eligible for PUA benefits during that time period. The claimant is eligible for unemployment insurance benefits for the one week ending May 30, 2020, as she available for work by that point, but employer did not have full-time work available for her. Employer will not be charged for those benefits.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial decision on the application for PUA benefits that claimant filed on April 22, 2020.



Christine A. Louis
Administrative Law Judge
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January 27, 2021
Decision Dated and Mailed

cal/kmj