

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEAVEN M LIPP
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL 20A-UI-13851-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Heaven Lipp (claimant) appealed a representative's June 4, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of March 8, 2020, because a leave of absence was granted by Grapetree Medical Staffing (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 5, 2021. The claimant participated personally. The employer participated by Elizabeth Soper, Human Resources Specialist.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-13851.S1, 20A-UI-13852.S1, and 20A-UI-15508.S1 were heard at the same time.

ISSUES:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 14, 2018, as a part-time, on-call, certified nursing assistant. She earned \$18.00 per hour. The employer offered employees hours through a portal and employees worked as many hours as they wanted. The claimant chose her schedule. In March 2020, the claimant worked eight-hour shifts on March 8, 21, and 22, 2020. The claimant earned \$144.00 each day. She did not take any other shifts in March 2020.

The employer sent a message to all employees indicating how to request a leave if they wanted to take a leave of absence. The claimant told the employer she wanted to take a leave of absence from April 10, 2020, through September 26, 2020. The claimant took the leave because her son and father had underlying medical issues that put them at risk should they contract Covid-19. The claimant returned to work with the employer after her leave of absence.

The claimant filed for unemployment insurance benefits with an effective date of March 8, 2020. Her weekly benefit amount was determined to be \$119.00. The claimant received benefits of \$119.00 per week from March 8, 2020, to the week ending May 30, 2020. This is a total of \$1,128.00 in state unemployment insurance benefits after the separation from employment. She also received \$5,400.00 in Federal Pandemic Unemployment Compensation for the nine-week period ending May 30, 2020. The claimant did not report any of the wages she earned in March 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decisions, which were the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is eligible to receive unemployment insurance benefits.

Iowa Code section 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.

871 IAC 24.23(23) and (26) provide:

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(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.

From March 8, 2020, through April 10, 2020, the claimant was at all times employed and earning wages from the employer. She was working in the same manner and earning the same wages as she was when she was hired. During this period, she was not partially unemployed.

She cannot be considered totally or temporarily unemployed because she was working hours that she chose. The claimant is not eligible to receive unemployment insurance benefits from March 8, 2020, through April 11, 2020, because she was not unemployed.

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.

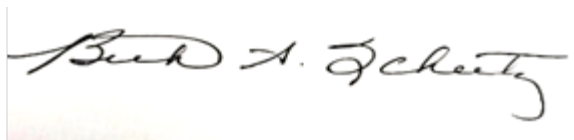
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits. She is not eligible to receive unemployment insurance benefits after April 12, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The June 4, 2020, reference 01, decision is affirmed. The appeal in this case was timely. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 8, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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 due to disqualifying separations, but who are currently unemployed 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

January 22, 2021
Decision Dated and Mailed

bas/scn