

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELSEY L WOLF
Claimant

SHEARERS FOODS BURLINGTON LLC
Employer

APPEAL 20A-UI-15584-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On November 9, 2020, the claimant filed an appeal from the June 16, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2021. Claimant participated. Employer did not register for the hearing and did not participate. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 16, 2020, Iowa Workforce Development (IWD) mailed a reference 01 unemployment insurance decision to claimant's last address of record. The decision denied benefits and warned that an appeal was due by June 26, 2020. Claimant did not receive the decision.

Claimant was unaware of the disqualification until she received the October 27, 2020, reference 03 unemployment insurance decision finding her overpaid benefits on November 6, 2020. Claimant filed an appeal three days later, on November 9, 2020.

On April 21, 2020, claimant was working. Employer sent claimant home because she had a cough. Employer asked claimant to get tested for COVID 19. Claimant did so and her results were negative. Nevertheless, employer did not allow claimant to return to work in an exercise of

caution. Claimant began looking for another job. Claimant started her new job on June 15, 2020, and has not received benefits after that date. Claimant reported the COVID pay employer gave her for the first few weeks of her unemployment, and those wages were deducted from her unemployment insurance benefits.

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 did not have a reasonable opportunity to timely appeal as she did not receive the decision. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant received the decision finding her overpaid benefits on the date an appeal was due. The claimant filed an appeal within a reasonable period of time after receiving the decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible for 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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed. So the issue is whether claimant was able to and available for work. The administrative law judge finds that she was. Claimant tested negative for COVID 19 and claimant asked to return to work. No doctor restricted claimant from working. Employer's caution at that time is understandable, but there is no evidence indicating claimant could not work and she is therefore eligible for benefits.

DECISION:

The June 16, 2020, (reference 01) unemployment insurance decision denying benefits is reversed. The appeal is timely. Claimant was totally unemployed and able to work. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
Administrative Law Judge
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February 11, 2021
Decision Dated and Mailed

cal/mh