

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NADEGE K MOLATO
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 21A-UI-06755-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timelines of Appeal
Iowa Code § 96.19(38)B – Total, Partial and Temporary Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 19, 2021 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective June 14, 2020 as she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 12, 2021. The claimant participated personally. Brandon Aggson represented the claimant. The employer, The University of Iowa, participated through witness Jessica Wade. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the appeal considered timely?
Was the claimant able to and available for work?
Was the claimant eligible for total, partial or temporary unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated February 19, 2021 (reference 03) that found the claimant was not eligible for benefits was mailed to the claimant's address of record. Claimant received it in the mail but not until after the due date when her husband gave it to her. Claimant filed an appeal through the online portal on March 3, 2021 after she received the decision.

Claimant began working for this employer on June 26, 2019 as a full-time kitchen helper. She works on campus. Effective June 14, 2020 through June 27, 2020, the kitchen was closed due to the COVID-19 pandemic and the claimant was temporarily laid off from her full-time job.

Claimant began working part-time hours that were available and during the week of June 28, 2020 through July 4, 2020 the claimant earned gross wages of \$219.92 (16.4 hours at the hourly rate of \$13.41). From July 5, 2020 through July 11, 2020 the claimant earned \$214.56 in gross wages but was on a personal leave of absence from work from July 8, 2020 through July 13, 2020 (the majority of the work week). From July 12, 2020 through July 18, 2020, the

claimant was off of work on a personal leave of absence on July 13, 2020 and July 16, 2020 and she earned gross wages of \$249.43 (18.6 hours at the hourly rate of \$13.41).

Claimant's administrative records establish that she filed her original claim for unemployment insurance benefits effective June 14, 2020. Her weekly benefit amount was \$401.00. Claimant reported earnings of \$0.00 for the week-ending June 20, 2020 and June 27, 2020; \$360.00 for the week-ending July 4, 2020; \$0.00 for the week-ending July 11, 2020; and \$360.00 for the week-ending July 18, 2020. The issue of whether the claimant correctly reported her gross wages earned each week will be remanded to the Benefits Bureau for an initial investigation and 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 appeal deadline due to a delay in the postal service delivering her mail and a delay in her husband giving the letter to her. As such, her appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2).

The next issue is whether the claimant was eligible for benefits. The administrative law judge finds as follows:

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 section 96.19, subsection 38, paragraph "b", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

(emphasis added).

Claimant was temporarily laid off due to lack of work for the week-ending June 20, 2020 and June 27, 2020, as she did not perform any services or earn any wages. See Iowa Code § 96.19(38). Benefits are allowed for those two weeks of temporary unemployment from June 14, 2020 through June 27, 2020, provided she remained otherwise eligible.

For the week beginning June 28, 2020 and ending July 4, 2020, the claimant was partially unemployed and earned \$219.92. She is eligible for partial benefits for that week, subject to a reduction in her weekly-benefit amount for gross wages earned.

For the week beginning July 5, 2020 and ending July 11, 2020, the claimant was not able to and available for work pursuant to Iowa Code § 96.4(3) for the majority of the work week due to a personal leave of absence. As such, benefits are denied for the week-ending July 11, 2020.

For the week beginning July 12, 2020 through July 18, 2020, the claimant earned gross wages of \$249.43. Claimant is eligible for partial benefits for that week, subject to a reduction in her weekly-benefit amount for gross wages earned.

DECISION:

The appeal shall be considered timely. The February 19, 2021 (reference 01) decision is modified in favor of the appellant. Claimant was temporarily laid off from June 14, 2020 through June 27, 2020 and benefits are allowed for those two weeks, provided she remained otherwise eligible.

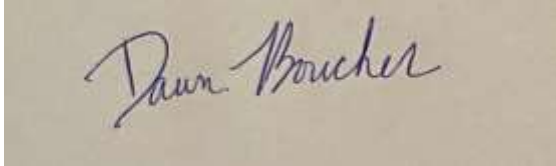
For the week beginning June 28, 2020 and ending July 4, 2020, the claimant was partially unemployed. Partial benefits are allowed for that week, subject to a reduction in her weekly-benefit amount for gross wages earned, and provided she remained otherwise eligible.

For the week beginning July 5, 2020 and ending July 11, 2020, the claimant was not able to and available for work pursuant to Iowa Code § 96.4(3) for a majority of the work week due to a personal leave of absence. As such, benefits are denied for the one-week period ending July 11, 2020.

For the week beginning July 12, 2020 through July 18, 2020, the claimant was partially unemployed. Partial benefits are allowed for that week, subject to a reduction in her weekly-benefit amount for gross wages earned, and provided she remained otherwise eligible.

REMAND:

The wage investigation issue as delineated in the findings of facts is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

May 19, 2021
Decision Dated and Mailed

db/ol

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.