

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN HEIDGERKEN

Claimant

APPEAL 22A-UI-05360-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL SAINTS CATHOLIC SCHOOL

Employer

OC: 03/22/20

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871—24.23(26) – Same Hours and Wages
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.1A(37) – 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:

The claimant filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not partially unemployed under the meaning of the law effective March 22, 2020. The parties were properly notified of the hearing. A telephone hearing was held on April 11, 2022, and was held together with the hearings for appeal number 22A-UI-05361-AR-T, 22A-UI-05362-AR-T, and 22A-UI-05363-AR-T. The claimant, Megan Heidgerken, participated personally. The employer, All Saints Catholic School, participated through testifying witnesses Paul Jahnke and Jeanne Von Feldt. Employer's Exhibit 1 was admitted. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's 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: Claimant began working at the employer as a playground supervisor and after school aide in January 2011. She worked part time throughout her employment with a set schedule each school day. Claimant remained employed in this role until September 18, 2020, when she resigned.

The school was impacted by the governor's disaster proclamation related to the COVID-19 pandemic in March 2020. At that time, the school closed, and there was no work available to

claimant. It was not immediately clear whether claimant would receive pay for the remainder of the school year. Accordingly, she filed a claim for unemployment insurance benefits with an effective date of March 22, 2020.

Claimant was notified on May 7, 2020, that she should stop filing claims for unemployment insurance benefits because the employer would pay her for the remainder of the school year. Claimant followed this instruction and did not file any additional claims for benefits after the week that ended May 2, 2020.

Employer's Exhibit 1 indicates that claimant was paid \$161.14 per week from March 22, 2020, through April 8, 2020. She did not receive any pay for the period time between April 8, 2020, and April 22, 2020. From April 22, 2020, to May 8, 2020, claimant was paid \$267.90 per week. Claimant's weekly benefit amount (WBA) during this period was \$162.00.

A disqualification decision was mailed to claimant's last known address of record on February 10, 2021, at the same time as another disqualification decision regarding the separation from employment that occurred at a different time. Claimant only received the separation decision; she did not receive the decision at issue here. Claimant submitted a timely appeal of later overpayment decisions she received. She submitted her appeal on February 27, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides, in pertinent part: "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."

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Date Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant 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 Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Though claimant had received another disqualification decision in February 2021 that she did not appeal, that decision was applicable to a different time period (September 2020), and gave claimant no notice that she was at risk of overpayment of benefits based on her weekly claims filed in March through May of 2020. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 section 96.19(38) was replaced by Iowa Code section 96.1A(37). Iowa Code section 96.1A(37) provides as follows:

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

37. "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.

Iowa Code section 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The parties agreed that, though claimant worked part-time hours, her schedule was stable, and that was the case throughout her employment. The employer's evidence indicates that, for the benefit weeks between March 22, 2020, and April 11, 2020, claimant was paid \$161.14 per week, which is less than her WBA, plus \$15.00. Accordingly, claimant was partially unemployed for the weeks between March 22, 2020, and April 11, 2020, and she will be eligible for a partial unemployment benefit payment for that time period.

For the benefit week that ended April 18, 2020, claimant was paid no wages, and she is considered totally unemployed. Benefits are allowed for that week. The employer's account

may be subject to charge for weeks in which claimant is eligible for a full or partial unemployment insurance benefit payment.

For the period from April 19, 2020, through May 2, 2020, claimant received wages in excess of her WBA, plus \$15.00. Accordingly, claimant was not partially or totally unemployed for those weeks, and benefits are denied.

DECISION:

The February 10, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant's appeal is timely. Claimant was partially unemployed during the weeks of March 22, 2020, through April 11, 2020. Claimant was totally unemployed for the week ending April 18, 2020. Benefits are allowed for those weeks, provided claimant is otherwise eligible. Claimant is not partially or totally unemployed for the weeks between April 19, 2020, and May 2, 2020, and benefits are denied for that time period.



Alexis D. Rowe
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

ar/kmj