

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTINE A BLAKEMAN
Claimant

APPEAL 20A-UI-11166-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COMMUNITY SCHOOL DIST
Employer

**OC: 03/15/20
Claimant: Appellant (4R)**

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal of the June 16, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 15, 2020 as she was still employed for the same hours and wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on November 3, 2020. The claimant, Kristine A. Blakeman, participated personally. Attorney Matthew Noel represented the claimant. The employer, Dubuque Community School District, participated through witness Mindy Klein. This hearing was consolidated with Appeal No. 20A-UI-13227-DB-T; 20A-UI-13228-DB-T; and 20A-DUA-00791-DB-T. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant eligible for total, temporary or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Did the claimant have reasonable assurance?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on June 16, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 26, 2020. The claimant filed an appeal to the Appeals Bureau on September 8, 2020. Claimant had spoken to the interviewer at Iowa Workforce Development about her situation on June 11, 2020 and was told that she needed to file for Pandemic

Unemployment Assistance (PUA) benefits. It was her understanding that filing for PUA would take care of her claims for benefits going back to March of 2020.

Claimant is employed as a school bus driver. She began working for this employer on July 10, 1998. This employer is an educational institution. Claimant works for this employer during the normal scheduled school days. She does not normally work during the normal school breaks or recesses. She would also pick up additional routes for extracurricular activities and school field trips on an as needed and as available basis. These trips were assigned to employees based upon seniority. There was no guarantee of additional routes above and beyond her regularly scheduled school bus route.

The school district's normally scheduled spring break occurred from March 15, 2020 through March 21, 2020. The school then closed for the remainder of the 2019-2020 school year from March 22, 2020 through June 2, 2020, due to the COVID 19 public health emergency. Even though the claimant was not physically working from March 22, 2020 through June 2, 2020 for this employer, she was still paid her normal route gross wages of \$541.66 per week. Her normal route consisted of 28.3 hours per week at an hourly rate of pay of \$19.14 for that period of time.

On June 17, 2020 the claimant received a letter of assignment stating that she had assurance to return as a school bus driver for the following 2020-2021 school year. On August 26, 2020, the claimant returned in her regular school bus driver position working 34.15 hours per week and received an increase of pay to \$19.57 per hour.

Before returning to her regular school year driving position, the claimant picked up additional shifts on June 12, 2020 (working 2.44 hours), June 15, 2020 (working 3.22 hours), July 17, 2020 (working 4.75 hours), July 20, 2020 (working 3.38 hours), August 3, 4, 5, 6, and 7, 2020 (working 28.52 hours), August 13, 2020 (working 2.32 hours), and August 20 – 21, 2020 (working 8.05 hours) all at the \$19.14 hourly rate of pay.

Claimant filed an initial claim for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount is \$394.00. Claimant's administrative records establish that she has other regular non-educational institution employment wage credits in the base period.

Claimant also works for the City of Dubuque as a part-time bus driver. She drove clients to different appointments and social activities. During the school year, the claimant worked 5:00 p.m. to 9:30 p.m. or 10:00 p.m. on Monday and Wednesday nights each week and then 8-10 hours on each Saturday. During the summer breaks, the claimant would work additional hours up to 35-40 hours per week. She earned \$19.16 per hour. On or about March 23, 2020, the claimant's working hours at the City of Dubuque were reduced because the employer was only running essential trips to medical providers and the grocery stores. Claimant would get zero hours some weeks and various hours on other weeks.

Claimant's administrative records establish that she reported the following gross earned wages for the weekly-continued claims in which she filed. She did not report gross wages earned from this employer each week when filing.

KCCO/xxxxxxxxxx

CONTINUED CLAIMS

WEEK	WK	AB	RF	ER	IN			
ENDING	ST	AV	OF	CT	PR	WAGES	VACAT	HLDY
08/22/20	S	Y	N	0	N	259	0	0
08/15/20	S	Y	N	0	N	336	0	0
08/08/20	S	Y	N	0	N	514	0	0

08/01/20	S	Y	N	0	N	369	0	0
07/25/20	S	Y	N	0	N	264	0	0
07/18/20	S	Y	N	0	N	291	0	0
07/11/20	S	Y	N	0	N	77	0	0
07/04/20	S	Y	N	0	N	192	0	115
06/27/20	S	Y	N	0	N	187	0	0
06/27/20	S	Y	N	0	N	187	0	0
06/20/20	S	Y	N	0	N	268	0	0
06/20/20	S	Y	N	0	N	268	0	0
06/20/20	S	Y	N	0	N	268	0	0
06/13/20	S	Y	N	0	N	282	0	0
06/13/20	S	Y	N	0	N	282	0	0
06/13/20	S	Y	N	0	N	282	0	0
06/13/20	S	Y	N	0	N	282	0	0
06/06/20	S	Y	N	0	N	57	0	0
05/30/20	S	Y	N	0	N	29	0	115
05/23/20	N	Y	N	0	N	0	0	0
05/16/20	N	Y	N	0	N	0	0	0
05/09/20	N	Y	N	0	N	0	0	0
05/02/20	N	Y	N	0	N	0	0	0
04/25/20	S	Y	N	0	N	77	0	0
04/18/20	S	Y	N	0	N	115	0	0
04/11/20	S	Y	N	0	N	172	0	0
04/04/20	S	Y	N	0	N	191	0	0
03/28/20	S	Y	N	0	N	172	0	0
03/21/20	S	Y	N	0	N	229	0	0

Claimant has received unemployment insurance benefits funded by the State of Iowa from March 15, 2020 through June 6, 2020 of \$4,293.00. Claimant received Federal Pandemic Unemployment Compensation (FPUC) benefits of \$6,000.00 for 10 weeks ending June 6, 2020.

This issue of whether the claimant is monetarily eligible for benefits based upon other non-educational institution wage credits and whether her reduction in hours worked from that employer is disqualifying has not been the subject of an initial investigation and determination by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant’s appeal shall be deemed timely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 issued 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).

The record in this case shows that more than ten calendar days elapsed between the issuing date and the date this appeal was filed. 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).

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.

However, in this case, the claimant's delay in submission was due to division error or misinformation when the claimant was told that she needed to file an application for PUA benefits and that would take care of her situation. As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to division error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely. The next issue is whether the claimant is eligible for regular unemployment insurance benefits funded by the State of Iowa.

Iowa Code section 96.4(5) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation

period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

Iowa Admin. Code r. 871-24.52(6) provides:

(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the **denial of the use of such wage credits. However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.**

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".

(emphasis added).

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.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

For the week of March 15, 2020 through March 21, 2020, this employer was on a customary vacation period (spring break) in which the claimant typically would not be paid because she was not scheduled to work. The claimant had reasonable assurance that she would return to work (or be paid her regular contracted wages) after the spring break. As such, the claimant may be eligible for benefits based upon the non-educational wages credits in her base period for this one-week period; but this employer's account may not be charged for benefits paid during the customary vacation period.

The school then closed due to the COVID-19 pandemic beginning March 22, 2020. While the claimant was not physically working her regular job with this employer because the school was

closed due to the COVID 19 pandemic, she was still paid her regular gross weekly wages from March 22, 2020 through June 2, 2020. Her gross weekly wages of \$541.66 were in excess of her weekly-benefit amount of \$394.00, plus fifteen dollars. As such, the claimant is not partially unemployed from March 22, 2020 through the week-ending June 6, 2020 as she is not eligible for benefits due to earning excessive wages pursuant to Iowa Admin. Code r. 871-24.18.

Effective the benefit week beginning June 7, 2020, the claimant was not working regularly for this employer during its regularly scheduled summer break between academic terms and she had reasonable assurance to return to work the following 2020-2021 school year. She did work some dates between June 7, 2020 and August 26, 2020 for this employer as listed in the findings of fact above and any benefits paid for those weeks would be subject to deduction of the gross wages she earned. From June 7, 2020 through benefit week-ending August 22, 2020, claimant's hours were reduced with her part-time employer, City of Dubuque.

Further, the claimant also earned excessive wages above and beyond her weekly benefit amount for the week-ending August 8, 2020 as she earned \$545.00 in gross wages from this employer. Benefits are denied from August 2, 2020 through August 8, 2020 pursuant to Iowa Admin. Code r. 871-24.18.

The claimant has other non-educational institution wage credits in the base period and may be monetarily eligible for benefits based upon those wage credits in the base period earned with the City of Dubuque. The issue of whether the claimant was totally or partially unemployed from that employer, City of Dubuque, is remanded to the Benefits Bureau for an initial determination.

Dubuque Community School District will not be charged for benefits paid for weeks claimed during a customary vacation period or between successive years or terms.

DECISION:

The appeal is considered timely. The June 16, 2020 (reference 02) decision is modified in favor of both parties. The claimant was not totally, partially or temporarily unemployed from this employer from March 22, 2020 through June 6, 2020 due to her excessive wage earnings. Benefits are denied from March 22, 2020 through June 6, 2020.

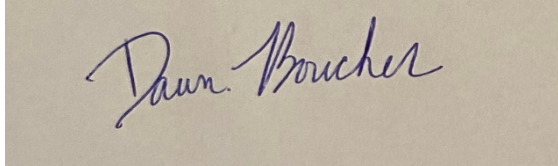
Claimant was not totally, partially or temporarily unemployed from August 2, 2020 through August 8, 2020 and benefits are denied for that one-week period due to excessive earnings.

Claimant has other non-educational wages in her base period and may be monetarily eligible for benefits based on those wages with the City of Dubuque alone. Benefits may be allowed effective March 15, 2020 through March 21, 2020, subject to the remanded issues below. Benefits may be allowed effective June 7, 2020 through August 22, 2020 based upon claimant's other non-educational wages in her base period and subject to the remanded issues below.

Dubuque Community School District (employer account no. 101899) will not be charged for benefits paid for weeks claimed during a vacation period or between successive years or terms.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a redetermination of the monetary record to reflect the decision above. This matter is also remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision regarding the status of claimant's reduction in work hours with the City of Dubuque.

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Dawn Boucher
Administrative Law Judge

November 9, 2020
Decision Dated and Mailed

db/scn