

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARLENE M WEBER
Claimant

SENTS SEED & SERVICES INC
Employer

APPEAL 19A-UI-05837-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Appellant (2-R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38) – Total, Partial, or Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – On-Call Worker

STATEMENT OF THE CASE:

On July 23, 2019, Darlene M. Weber (claimant) filed an appeal from the July 5, 2019, reference 06, unemployment insurance decision that denied benefits effective May 26, 2019 based upon the determination she was still employed in her on-call employment with Sents Seed & Services, Inc. (employer). After due notice was issued, a telephone conference hearing was held on August 14, 2019. The claimant participated personally. The employer participated through Owner Todd Sents. The Department's Exhibits D1 through D3 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's wage history.

ISSUES:

Is the claimant's appeal timely?
Is the claimant totally, partially, or completely unemployed?
Is the claimant able to work, available for work, and actively and earnestly seeking work effective May 26, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for the employer part-time as Office Help from September 4 through October 2, 2018 when her services were no longer needed. The claimant had not worked for the employer in any prior years and the employer has no plans to employ the claimant in the future. Whether the claimant has requalified for unemployment insurance benefits since the October 2 separation or whether that separation qualifies her for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The claimant filed her claim for unemployment insurance benefits effective May 26, 2019. The claimant's base period encompasses all four quarters of 2018. She had three employers in her

base period and all of her wage credits are for part-time work. She has filed for benefits each week from May 26 through the week ending August 10 and has reported wages earned from her current employer Britt Foods, Inc. (account number 286463) for whom she works on a part-time basis. IWD has already determined the claimant is partially unemployed from Britt Foods and they have been relieved of charges. See Unemployment Insurance Decision dated June 17, 2019, reference 02.

The disqualification decision was mailed to the claimant's address of record on July 5, 2019. (Exhibit D3) The decision contained a warning that an appeal needed to be filed by July 15. The claimant filed an appeal on July 23, after the due date, stating she had submitted an appeal on July 9 but it had not been received by the agency. (Exhibit D1) Sometime between July 23 and August 14, the date of the hearing, a fax from the Britt Public Library sent on July 9 containing the claimant's original appeal was added to the case file. (Exhibit D2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely, she is totally unemployed from this employer, and has been determined to be partially unemployed from Britt Foods, her current employer. Benefits are allowed, provided the claimant is otherwise eligible.

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

Filing – determination – appeal.

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.

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.

The claimant filed an appeal before the deadline. However, due to agency error, it was not docketed until her follow-up appeal filed after the deadline. The claimant's appeal is timely.

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 Code section 96.19(38) provides:

Definitions.

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. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant is totally unemployed with respect to this employer as she is no longer employed and has not performed services for this employer since October 2, 2018. The issues of whether the claimant has requalified for unemployment insurance benefits since the separation on October 2 or whether that separation qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a determination or, if necessary, a fact-finding interview and determination to include both parties.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. IWD has determined the claimant is partially unemployed with her current part-time employer. As a result, the claimant is considered able to and available for work as she has been working and reporting wages. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The claimant's appeal is timely. The July 5, 2019, reference 06, unemployment insurance decision is reversed. The claimant is totally unemployed with regard to this employer. She has been determined to be partially unemployed with her current part-time employer and is considered able to and available for work when she reports to that employment. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issues of whether the claimant has requalified for unemployment insurance benefits since the separation on October 2, 2018 or whether that separation qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a determination or, if necessary, a fact-finding interview and determination to include both parties.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn