

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALINE NASAMAZA**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 22A-UI-02896-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/20**  
**Claimant: Appellant (5)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 20, 2020 (reference 01) unemployment insurance decision that found the claimant was not eligible for benefits effective May 31, 2020 due to a voluntary leave of absence from work. Due notice was issued and a telephone hearing was held on February 28, 2022. Claimant participated personally. Language Link provided language interpretation services to the claimant. Ntwari Gakunzi participated as a witness for the claimant. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 22A-UI-02897-DB-T; 22A-UI-02898-DB-T and 22A-UI-02899-DB-T.

**ISSUES:**

Did the claimant file a timely appeal?  
Was the claimant able to and available for work?  
Was the claimant on a voluntary leave of absence from work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was mailed to the claimant on August 20, 2020 (reference 01) which denied her State of Iowa funded unemployment insurance benefits. Claimant never received the decision in the mail. Claimant filed an appeal on January 18, 2022 after receiving a statement of overpayment bill from Iowa Workforce Development.

Claimant was employed as a full-time packager with this employer. In May of 2020, the claimant tested positive for COVID-19. She was ill, weak, had headaches and was unable to work due to the illness. She remained away from work through the week ending August 15, 2020. Claimant stopped filing weekly-continued claims after August 15, 2020.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

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 never received the decision in the mail due to postal service delay or error. 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 able to and available for work.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) provides:

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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

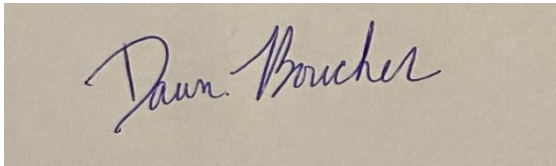
- (1) An individual who is ill and presently not able to perform work due to illness.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The burden is on the claimant to establish that she was able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant credibly testified that she was ill with COVID 19 from May 31, 2020 through August 15, 2020, suffering from weakness leading her not to be able to work. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective May 31, 2020 through August 15, 2020.

**DECISION:**

The appeal is considered timely. The August 20, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. The claimant was not able to work from May 31, 2020 through August 15, 2020 pursuant to Iowa Code section 96.4(3). Benefits are denied for that period.

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Dawn Boucher  
Administrative Law Judge

March 16, 2022

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Decision Dated and Mailed

db/abd