

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATRINA COZAD
Claimant

APPEAL 21A-UI-00191-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 05/24/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 18, 2020, Katrina Cozad (claimant/appellant) filed an appeal from the October 2, 2020 (reference 01) unemployment insurance decision that determined claimant was laid off between academic years or terms and had reasonable assurance of employment in the next term. Wages earned from employer from January 1, 2019 and May 24, 2020 were removed from the claim.

A telephone hearing was held on February 4, 2021. The parties were properly notified of the hearing. Claimant participated personally. Des Moines Ind Community Sch Dist (employer/respondent) participated by Benefits Specialist Rhonda Wagoner.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant eligible for benefits between academic years or terms?
- III. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on August 16, 2017. Claimant is still employed by employer part-time as a cheerleading coach. Claimant's contract with employer is year-round and spread over 24 pay periods. Claimant is paid and performs work between terms. Claimant has continued to work for and be paid by employer during the relevant timeframe.

Claimant was also employed by Kum & Go and Rodan Office Cleaning. Claimant took a leave of absence from Kum & Go beginning in March 2020. Claimant is still on the leave of absence from Kum & Go. The leave of absence was necessary because she needed to stay home with her school-aged child during the day to assist him with school work during the pandemic.

Claimant began working for Rodan Office Cleaning in February 2020. This was a part-time, evening job. Claimant remained in that position until October 6, 2020, when she became ill with COVID-19. She was too ill to return to work there until mid-January 2020.

Claimant has filed a weekly claim for benefits each week from the benefit week ending May 30, 2020 and continuing through the benefit week ending January 30, 2021. Claimant has not applied for Pandemic Unemployment Assistance (PUA).

The Unemployment Insurance Decision was mailed to claimant at the above address on October 2, 2020. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 12, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant received the decision in the mail around October 13, 2020. However, she was ill during this time and unsure how to proceed. After several calls to the department she was able to reach a supervisor, who advised her there were several administrative irregularities or errors with her claim and that she should appeal. Claimant appealed at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The administrative law judge therefore has jurisdiction to address the underlying issues. The October 2, 2020 (reference 01) unemployment insurance decision is MODIFIED in favor of respondent.

Claimant is a twelve-month, year-round employee of employer. As such, benefits based on wages earned with employer should not have been removed from her claim. However, claimant does not meet the ability and availability requirements to be eligible for benefits from the benefit week ending May 30, 2020 and continuing to present. Benefits must be denied.

I. Is the appeal timely?

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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)(a) 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 on 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)

(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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 lateness of claimant's appeal was due to her receiving the decision late, due to her illness, and due to department error. Claimant appealed shortly after finally being able to reach a department supervisor, who advised her there were several administrative irregularities or errors with her claim and that she should appeal. In the circumstances, the administrative law judge finds there was good cause for the lateness and the appeal is therefore timely. The administrative law judge therefore has jurisdiction to address the underlying issues.

II. Is the claimant eligible for benefits between academic years or terms?

Iowa Code section 96.4(5) provides:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.1A, 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.

Claimant is a twelve-month, year-round employee of employer. As such, benefits based on wages earned with employer should not have been removed from her claim.

III. Is the claimant able to and available for work?

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 Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.22(1)a 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.

Claimant took a leave of absence from Kum & Go beginning in March 2020. Claimant is still on the leave of absence from Kum & Go. The leave of absence was necessary because she needed to stay home with her school-aged child during the day to assist him with school work during the pandemic. Nonetheless, the leave of absence made claimant unavailable for work during this time. Claimant was also too ill to work from October 6, 2020, when she became ill with COVID-19, until mid-January 2020. Claimant's illness rendered her unable to work during that time.

While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The administrative law judge therefore has jurisdiction to address the underlying issues. The October 2, 2020 (reference 01) unemployment insurance decision is MODIFIED in favor of respondent.

Claimant is a twelve-month, year-round employee of employer. As such, benefits based on wages earned with employer should not have been removed from her claim. However, claimant does not meet the ability and availability requirements to be eligible for benefits from the benefit week ending May 30, 2020 and continuing to present. Benefits must therefore be denied.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 18, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.