

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LORRIE J MARTIN
Claimant

WATERLOO-CEDAR VALLEY SCHOOLS
Employer

APPEAL 22A-UI-11600-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/15/20
Claimant: Appellant (5R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.52(10) – Substitute Teachers
Iowa Admin. Code r. 871-24.22(2) – Substitute Workers

STATEMENT OF THE CASE:

On May 4, 2022, claimant Lorrie J. Martin filed an appeal from the March 8, 2021 (reference 04) unemployment insurance decision that denied benefits effective May 31, 2020, based on a determination that claimant had reasonable assurance of continued employment in the coming academic year or term. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, July 11, 2022. Appeal numbers 22A-UI-11600-LJ-T, 22A-UI-11601-LJ-T, 22A-UI-11602-LJ-T, and 22A-UI-11603-LJ-T were heard together and created one record. The claimant, Lorrie J. Martin, personally participated. The employer, Waterloo-Cedar Valley Schools, did not appear for the hearing and did not participate. Department's Exhibits D-1, D-2, D-3, D-4, and D-5 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant a substitute teacher?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Waterloo-Cedar Valley Schools in 2012. Throughout her employment, claimant has worked as a substitute teacher and substitute clerical worker. As a substitute for the school system, claimant fully controls her work schedule. She would access the employer's system to see what type of work was available each day and would select an assignment that interested her. Claimant was not obligated to accept work at any time.

Claimant opened a claim for benefits effective March 15, 2020, when the schools closed due to COVID-19. At that point, there was no work available for substitute teachers. There was also

no substitute teaching work available during the summer months, when claimant would ordinarily teach summer school. In addition to substitute teaching over the summer, claimant would also ordinarily work for the employer as part-time summer clerical employee. Claimant's hours would vary each week depending on the work available.

Claimant received a letter from the school system each summer, between one and two months prior to the beginning of the school year. In this letter, the employer would inquire whether claimant would be returning as a substitute for the coming academic year. If claimant intended to return, she would check a box and mail back a form to the employer. Claimant received this letter and informed the employer she would be returning for the 2020-2021 academic year.

Claimant did not, in fact, return to substitute teaching in the fall of 2020. Her heart doctor advised her that being around children would not be good for her health, due to the likelihood of continued exposure to COVID-19. Claimant did not notify anyone that she would not be returning. She simply stopped accessing the employer's system to select substitute assignments.

Subsequently, claimant filed an application for Pandemic Unemployment Assistance ("PUA") benefits. Claimant stated she was a substitute teacher unable to work due to the health risks posed by COVID-19. Specifically, claimant cited advice from her cardiologist that she should no longer substitute teach. Claimant was granted PUA benefits effective December 13, 2020.

The unemployment insurance decision was mailed to the claimant's address of record on March 8, 2021. (Exhibit D-1) The claimant did not receive the decision. She was unaware she was not qualified for the benefits she had claimed until she received two overpayment decisions dated April 26, 2022. (Exhibits D-3 and D-4) The appeal was sent within ten days after receiving those two decisions. (Exhibit D-5)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not eligible for regular unemployment insurance benefits.

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

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."

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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The claimant 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. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was eligible for benefits effective May 31, 2020. Iowa Code section 96.19(38) provides:

"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(2)i(3) 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.

(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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Iowa Admin. Code r. 871-24.52(10)(c) states:

Substitute teachers.

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2)“i”(3).

Because claimant was hired to work as a substitute or as needed, and the wage history consists of on-call wages, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any reduction in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Claimant does not appear to have sufficient other, non-educational wages in her base period that would make her monetarily eligible for benefits. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded Pandemic Unemployment Assistance (“PUA”) benefits. This matter will be remanded to determine whether the effective date of claimant’s PUA allowance may be backdated to May 31, 2020.

DECISION:

The March 8, 2021 (reference 04) unemployment insurance decision is modified with no change in effect. Claimant was a substitute teacher not unemployed within the meaning of the law; she was not able to and available for work. Benefits must be withheld.

REMAND:

This matter is remanded to the Benefits Bureau to determine whether the effective date of claimant’s PUA allowance may be backdated to May 31, 2020.



Elizabeth A. Johnson
Administrative Law Judge
Administrative Hearings Division, UI Appeals Bureau
Iowa Department of Inspections and Appeals

August 9, 2022
Decision Dated and Mailed

lj/lj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.