

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY GREENE
Claimant

PATHWAY LIVING CENTER INC
Employer

APPEAL 21A-UI-21864-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 4, 2021, the claimant/appellant filed an appeal from the November 24, 2020, (reference 02) unemployment insurance decision that disallowed benefits based on claimant not being able to work and available to work. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2021. The hearing was held together with appeals 21A-UI-21865-CS-T; 21A-UI-21866-CS-T; and 21A-UI-21867-CS-T; 21A-UI-21868-CS-T and combined into one record. Claimant participated at the hearing. Employer participated through Executive Director, Melissa Peterson. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is claimant's appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on November 24, 2020. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated September 30, 2021. The appeal was sent within ten days after receipt of that decision.

Claimant began working for employer in August, 2019. Claimant was a goal coordinator for the employer. On March 23, 2020, claimant went on a leave of absence from the employer. Claimant's physician restricted claimant from working and recommended that claimant self-isolated due to her health conditions.

On or about July 17, 2020, the employer sent claimant a letter notifying her that she needed to return to work by July 18, 2020. Claimant did not return to work due to her doctor's recommendation to self-isolate. The issue of claimant's separation has been previously

determined in a decision dated November 24, 2020(reference 03). That decision disallowed benefits due to the claimant voluntarily quitting.

Claimant applied for Pandemic Unemployment Assistance (PUA). Claimant was approved for benefits beginning on November 16, 2020. The record is unclear on whether claimant applied for benefits for the time period of April 5, 2020 through November 15, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 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. 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 appellant 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 the claimant is able to and available for work. The administrative law judge concludes claimant is not able to and available for benefits effective April 5, 2020 through July 18, 2020.

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. 871-24.22(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.

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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant was put on a medical restriction from working by her physician beginning April 5, 2020. As a result, the claimant has not established her ability to work for the employer effective April 5, 2020 through the week ending July 18, 2020. Benefits are denied April 5, 2020, through July 18, 2020.

DECISION:

The claimant's appeal is timely.

The November 24, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 4, 2020, through week ending July 18, 2020. Benefits are denied.

REMAND:

The issue of whether claimant qualifies for PUA benefits for the time period of April 5, 2020, through November 15, 2020, is remanded to the Benefits Bureau for an initial investigation and determination.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style. Below the signature, there is a small, faint, illegible stamp.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 5, 2022
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who were 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa is the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.