

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL L IVIE
Claimant

COPPER KITCHEN LLC
Employer

APPEAL 21A-UI-10690-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 18, 2021, Crystal L. Ivie (claimant) filed a timely appeal from the August 19, 2020, reference 02, unemployment insurance decision that denied benefits effective May 17, 2020, based on the determination she refused a suitable offer of work with Copper Kitchen, LLC (employer). After due notice was issued, a telephone conference hearing was held on July 1, 2021, and consolidated with the hearing for appeal 21A-UI-10691-SC-T. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The department's Exhibits D1 and D2 were admitted into the record.

ISSUES:

Is the claimant's appeal timely?
Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective May 17, 2020?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant filed her claim for unemployment insurance benefits effective April 12, 2020, after she was temporarily laid off due to the COVID-19 pandemic. On or about May 18, the employer contacted the claimant and asked her to return to her prior job. The claimant declined because she did not have childcare. The claimant lacked childcare for her three children through the expiration of her claim year, and she did not return to work.

The unemployment insurance decision that denied benefits until the claimant requalified by earning ten times her weekly benefit amount in insured wages was mailed to the claimant's address of record on August 19, 2020. The claimant did not receive the decision because there was a fire at her apartment building and mail delivery was impacted. The first notice of disqualification was the overpayment decision dated April 13, 2021. The appeal was sent within ten days after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is timely and she declined an offer of work because she was not available. Benefits are denied effective May 17, 2020, through the end of the April 12, 2020, claim year.

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 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.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. *To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.* [Emphasis added.]

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). *Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority.* If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases. [Emphasis added.]

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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". [Emphasis added.]

Iowa Admin. Code r. 871-24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The offer of work may have been suitable, but the claimant did not accept it because she was not available for work. Therefore, she is not subject to a disqualification that requires her to earn ten times her weekly benefit amount in insured wages to be eligible for benefits; however, she is not eligible for benefits on a week-by-week basis effective May 17, 2020 through the end of the claim year. Benefits are withheld until such time as the claimant makes herself available for work, provided she is otherwise eligible.

DECISION:

The claimant's appeal is timely. The August 19, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant declined an offer of work but was unavailable at the time. She is no longer denied benefits until she requalifies by earning ten times her weekly benefit amount in insured wages; however, she is still not eligible for benefits effective May 17, 2020, because she was not available for work. Benefits are withheld through the end of the April 12, 2020, claim year.



Stephanie R. Callahan
Administrative Law Judge

July 13, 2021
Decision Dated and Mailed

src/mh