

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK D COLLIER
Claimant

APPEAL 21A-UI-08126-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTERPRISE RENT-A-CAR COMPANY
Employer

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of protest
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On March 12, 2021 the claimant/appellant, Mark Collier, filed an appeal from the October 27, 2020 Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2021. The claimant participated personally. The employer did not participate.

ISSUES:

Was the 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 denying benefits was mailed to claimant's address of record on October 27, 2020. The decision contains a warning that the claimant appeal is due ten days from the initial notice date. Claimant received the decision and attempted to file an appeal in a timely manner. Claimant tried to file online and then was told by an IWD representative that he would call back in three to four weeks. Claimant never received a call back. On March 12, 201 claimant drove to his local IWD office and filed the appeal in person.

The claimant worked for the employer as a driver transporter part-time starting February 6, 2019. Claimant was laid off March 20, 2020 due to lack of work, and was called back to work in June 2020. Claimant worked from June 6

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant has filed a timely appeal as required by the Iowa Employment Security Law.

Iowa Code § 96.6(2) provides in pertinent part:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant discussed his appeal with IWD staff in a timely fashion. He was told that he would be called back and no one from IWD called him back. The claimant filed the appeal in March 2021. Claimant's delay was due to agency error or misinformation. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant was not able to or 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 96.1A, 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".

under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23 provides:

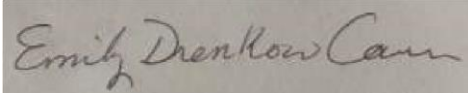
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Claimant's initial decision found him ineligible June 28, 2020 as he was on a voluntary leave of absence. Claimant testified that he was called back to work June 6, 2020 and worked through September. This would make him ineligible after the June 28, 2020 date because he was working. Claimant at times testified that he was unemployed in August 2020, and then later that he was not. In short the claimant's testimony was confusing, conflicting and unpersuasive. As such the claimant has failed to meet his burden of proof. Benefits are denied effective June 28, 2020.

DECISION:

The October 27, 2020 unemployment insurance decision denying benefits is affirmed. Benefits are denied.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 18, 2021
Decision Dated and Mailed

ed/mh