

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BEVERLY A ATTIG**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-07251-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

On June 3, 2020, the claimant filed an appeal from the March 12, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2020. Claimant participated. Employer participated through witness Teri Lunning and was represented by Barbara Buss. Department Exhibit 1 was received.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?  
Is the employer's account subject to charge?  
Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 12, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision to claimant that denied benefits. The decision warns that an appeal is due by March 22, 2020. Claimant received the decision within the appeal period, but did not pay attention to the deadline.

Claimant later received several decisions regarding a failure to report to the Iowa Workforce Development as directed regarding a question on claimant's reported receipt of pension benefits. Claimant worked with Iowa Workforce Development to rectify that issue and on March 30, 2020, a decision was issued allowing benefits.

Claimant did not appeal the decision denying her benefits based on her continued employment with employer. Claimant did not understand the decision was denying her benefits, and Iowa Workforce Development did not issue a summary decision notifying claimant of that, as it normally does. Claimant periodically called Iowa Workforce Development and received advice that did not accurately address the situation. Finally, a workforce employee instructed claimant to write down everything that happened and send it in. Claimant did so on June 3, 2020.

Claimant has worked for employer since June 3, 2019. Claimant was hired as a part-time deli clerk. Claimant hoped to work 20 to 25 hours per week, but employer did not guarantee her a certain amount of hours per week.

In March 2020, the United States declared a public health emergency based on the COVID 19 pandemic. Governor Reynolds shut down dine-in services for a period of time. As a result claimant worked reduced hours until the two weeks ending April 18, 2020, during which she worked no hours at all. After that, claimant's hours picked back up.

Claimant has separated from employment. Since claimant has not claimed benefits after her separation, that issue will not be remanded for a fact finding interview. If claimant later reopens her claim, Iowa Workforce Development will issue a new notice of claim and employer can protest the benefits based on the separation at that time.

#### **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 § 96.6(2) provides, in pertinent part:

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.

The claimant's failure to file an appeal within the appeal period was because of incorrect and/or confusing information received from Iowa Workforce Development. Claimant filed an appeal as soon as she was instructed to do so. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was unemployed and able to work.

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 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 38, paragraph "b", subparagraph (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(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this case, claimant is not eligible for unemployment insurance benefits during the six weeks ending April 4, 2020, as she was still working on a part-time basis, as agreed upon at the time of hire. Claimant is eligible for unemployment insurance benefits during the two weeks ending April 18, 2020, as she was totally unemployed during those weeks. Because claimant is eligible for regular unemployment insurance benefits for those weeks, she is also eligible for a Federal

Pandemic Unemployment Compensation benefits during that time period. See PL 116-136, Sec. 2104(b).

Since the lack of work was due to the COVID 19 pandemic, this matter will be remanded to the Tax Bureau for a determination on whether employer should be relieved of benefit charges in accordance with the policy announced by Iowa Workforce Development at the start of the pandemic.

**DECISION:**

The March 12, 2020, (reference 01) unemployment insurance decision is modified in favor of claimant. The appeal is timely. The claimant was still employed at the same hours and wages and is not eligible for unemployment insurance benefits for the six weeks ending April 4, 2020. Claimant was totally unemployed and is eligible for unemployment insurance benefits and FPUC benefits for the two weeks ending April 18, 2020. This matter will be remanded for a determination by the Tax Bureau on whether the employer should be relieved of charges for those benefits since the lack of hours was due to the COVID 19 pandemic.



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

August 18, 2020

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Decision Dated and Mailed

cal/sam

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits for a period of time. 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 are currently 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>.