

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DORSHEANA NIKODIJEVIC
Claimant

APPEAL 20A-UI-07762-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On July 7, 2020, the claimant filed an appeal from the July 2, 2020 (reference 02) unemployment insurance decision that denied benefits to the claimant based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2020. Claimant participated personally. Timothy Macklin participated as a witness for the claimant. The employer, Walmart Inc., did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision denying the claimant benefits was issued on July 2, 2020. Claimant filed her appeal online on July 7, 2020. Claimant has worked for the employer since October of 2019. She is still considered employed with the employer. Due to the claimant's medical conditions, she requested and was granted a leave of absence from work. She is still under her doctor's care and is unable to work at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 ten calendar days for appeal begins running on the issuing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). The claimant filed an appeal online on July 7, 2020. Her appeal is timely.

The next issue is whether the claimant is able to and available for work. She is not.

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", 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(10) 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.

In this case, the claimant notified the employer that she could not work and she was granted a leave of absence. As such, the period of time she is not working is deemed to be a period of voluntary unemployment. Claimant has not established that she is able to and available for work pursuant to Iowa Code § 96.4(3). Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 26, 2020.

DECISION:

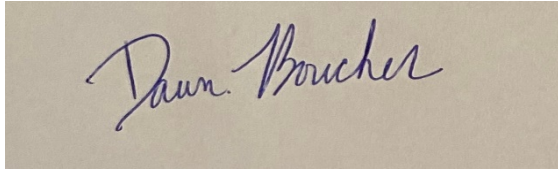
The appeal is timely. The July 2, 2020 (reference 02) unemployment insurance decision is affirmed. The claimant is on a voluntary leave of absence and is not able to work and available for work effective April 26, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time as the claimant is able to and available for work.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.



Dawn Boucher
Administrative Law Judge

August 20, 2020
Decision Dated and Mailed

db/scn