

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SADIE L HANSEN
Claimant

HANSEN'S FARM FRESH DAIRY INC
Employer

APPEAL 22A-UI-06152-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Sadie L Hansen, the claimant/appellant, filed an appeal from the March 17, 2021, (reference 03) unemployment insurance (UI) decision that denied benefits as of March 15, 2020, because Ms. Hansen was still employed with this employer for the same hours and same pay as in her original contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2022. Ms. Hansen participated in the hearing. Emily Wilson, attorney, represented Ms. Hansen. Amy Kaus, Ms. Hansen's mother participated in the hearing in favor of Ms. Hansen. The employer participated through Jordan Hansen, human resources manager. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted as evidence. Both parties waived notice of the hearing.

ISSUES:

Is Ms. Hansen's appeal filed on time?
Is Ms. Hansen able to and available for work?
Is Ms. Hansen temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Hansen at the correct address on March 17, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by March 27, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. March 27, 2021 was a Saturday; therefore, the deadline was extended to Monday, March 29, 2021. Ms. Hansen did not receive the decision in the mail. To her knowledge, Ms. Hansen was not having any issues receiving mail at that time.

IWD issued two additional decisions on March 7, 2022 finding Ms. Hansen was overpaid REGULAR (state) UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits. Ms. Hansen received those decisions in the mail. Ms. Hansen filed an appeal online on March 10, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 10, 2022. IWD set up appeals for the two overpayment decisions and the March 17, 2021, 2021, (reference 02) decision.

The administrative law judge further finds Ms. Hansen began working for the employer, a base period employer, in 2016. She works as an as-needed part-time cashier. Her hours vary and the employer pays her \$10.00 per hour. As of March 15, 2020 Ms. Hansen was still employed with this employer, and nothing about her pay or her as-needed part-time status had changed

Ms. Hansen also worked for J-Lee Dairy, Inc, a base period employer. She began working for this employer in 2018. She works as an as-needed part-time tour guide. Her hours vary and the employer pays her \$10.00 per hour. As of March 15, 2020, the effective date of her claim, Ms. Hansen was still employed with the employer, and nothing about her pay or her as-needed part-time status had changed.

Ms. Hansen also worked for employer CBE, a non-base period employer. Ms. Hansen began working for this employer in January 2020. She worked as part-time human resources intern. In March 2020, this employer laid off Ms. Hansen due to the COVID-19 pandemic. Ms. Hansen filed her initial UI claim because of the layoff. Ms. Hansen's employment ended with this employer as of May 15, 2020. IWD has not issued a decision regarding Ms. Hansen's eligibility for benefits regarding this non-base period employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hansen's appeal of the reference 03 decision was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Hansen did not receive the reference 03 decision before the deadline and, therefore, could not have filed an appeal on the appeal deadline. The notice provision of the decision was invalid. Ms. Hansen timely appealed when she learned that the department had concluded she was overpaid benefits. Ms. Hansen's appeal of the reference 03 decision was filed on time.

The administrative law judge further concludes as follows:

Iowa Code § 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 Code § 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 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.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Ms. Hanson was continuously employed with this employer for the same hours and same pay as in her contract of hire. Benefits are denied.

DECISION:

Ms. Hansen's appeal was filed on time. The March 17, 2021, (reference 03) decision is AFFIRMED. As of March 15, 2020, Ms. Hansen was still employed in her job with this employer at same hours and wages as in her original contract of hire. Benefits are DENIED.

REMAND:

This matter is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for further action on the able to and available for work, partial unemployment, and/or temporary unemployment issues pertaining to employer CBE as the Bureau deems appropriate, if any.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 12, 2022

Decision Dated and Mailed

dz/ac

NOTE TO MS. HANSEN:

- If you were unemployed from March 2020 through May 2020 for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
 - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
 - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last two sentences in that section.
 - The PUA application link is at the end of the second-to-last sentence of the section.
 - The reference number/authorization number is the pin number you used for the appeal hearing: 106151.
- If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.
- If you do not apply for and are not approved for PUA, you are required to repay the benefits you've received so far.

- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**