

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY P WIEBBECKE

Claimant

APPEAL 20A-UI-09915-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMBERLINE MANUFACTURING COMPANY

Employer

OC: 03/15/20

Claimant: Respondent (2)

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
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On August 13, 2020, the employer filed an appeal from the July 30, 2020 (reference 03) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her being on a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on October 2, 2020. Claimant participated personally. The employer, Timberline Manufacturing Company, participated through witness Craig Schroeder. The hearing was combined with the hearing for Appeal 20A-UI-09916-DB-T. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the employer's appeal timely?
Was the claimant able to and available for work?
Was the claimant totally, partially, or temporarily unemployed?
Was the claimant on an approved leave of absence?
Was the claimant overpaid benefits?
Was the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that found the claimant was eligible for unemployment insurance benefits was mailed to the employer's old address of record on July 30, 2020. The employer received the decision in the mail but it is unknown what date it received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 9, 2020. The employer faxed an appeal to the Appeals Bureau on August 13, 2020. The reason why the appeal was filed after the due date was because the employer's premises was hit by the derecho storm that struck the State of Iowa on August 10, 2020. The employer was without

power and without access to its employment records until August 13, 2020, when it faxed its appeal to the appeal bureau.

Claimant has worked for employer since April 22, 2019. She works full-time as an assembler. She is still employed to date. Beginning March 16, 2020 through May 3, 2020 the claimant was off of work on a voluntary unpaid leave of absence. Her minor child's daycare had closed down due to the COVID 19 pandemic and the claimant did not have childcare for her child. She returned to work full-time on May 4, 2020 when she was able to secure childcare.

Beginning June 11, 2020 through July 19, 2020 the claimant was off of work on a voluntary unpaid leave of absence again due to lack of childcare for her minor child. Her minor child was having surgery, which required that she quarantine prior to the surgery. Claimant was off of work quarantining and caring for her minor child from June 11, 2020 through July 19, 2020. She returned to work on July 20, 2020. The employer had work available if the claimant would have been able to and available for work. There was no short-term layoff or plant shut down.

Claimant's administrative records establish that she has received regular State of Iowa unemployment insurance benefits of \$4,030.00 from March 15, 2020 through July 18, 2020. Claimant has also received Federal Pandemic Unemployment Compensation of \$7,200.00 from March 29, 2020 through July 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

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 issued 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 record in this case shows that more than ten calendar days elapsed between the issuing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was **deprived of a reasonable opportunity to assert an appeal in a timely fashion**. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, the employer was deprived of a reasonable opportunity to assert an appeal in a timely fashion because the derecho storm caused a lack of power and the employer was unable to retrieve its business records about the claimant's employment. The employer asserted an appeal as soon as possible after it was able to access its business records. As such, the appeal shall be considered timely.

The next issue is whether the claimant was able to and available for work. The administrative law judge finds that she was 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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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(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 during both periods of time that she needed to care for her minor child. She was not on a short-term layoff due to the employer's lack of work for her. As such, both periods of time she was not working are deemed to be a period of voluntary unemployment. The claimant has not established that she was 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 March 15, 2020.

Because benefits are denied, the issue of overpayment of regular State of Iowa unemployment insurance benefits and Federal Pandemic Unemployment Compensation that were issued based on her receipt of regular State of Iowa benefits must be addressed.

Iowa Code § 96.3(7)a provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As such, any overpayment of regular State of Iowa benefits must be repaid if the claimant is determined ineligible for benefits. The administrative law judge concludes that the claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa of \$4,030.00 for the weeks between March 15, 2020 and July 18, 2020 pursuant to Iowa Code § 96.3(7). Those benefits must be repaid to the agency.

The next issue is whether the claimant has also been overpaid Federal Pandemic Unemployment Compensation ("FPUC") benefits. The administrative law judges finds that she has been overpaid FPUC benefits. Those benefits must be repaid to the agency.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment. -- In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular State of Iowa unemployment insurance benefits. Accordingly, this also disqualifies her from receiving FPUC benefits based upon her previously paid out regular State of Iowa unemployment insurance benefits. In addition to the regular State of Iowa unemployment insurance benefits claimant received, she also received \$7,200.00 in FPUC benefits for the weeks between March 29, 2020 through July 18, 2020. Claimant is required to repay those benefits as well.

DECISION:

The employer's appeal shall be considered timely. The July 30, 2020 (reference 03) unemployment insurance decision is reversed. The claimant was on a voluntary leave of absence and was not able to work and available for work effective March 15, 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.

The claimant is overpaid regular State of Iowa unemployment insurance benefits of \$4,030.00 for the weeks between March 15, 2020 and July 18, 2020 and she must repay the agency those benefits.

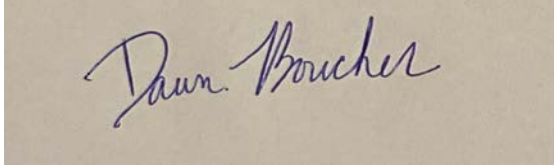
The claimant is also overpaid \$7,200.00 in Federal Pandemic Unemployment Compensation benefits for the weeks between March 29, 2020 through July 18, 2020. Claimant is required to repay those benefits as well.

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.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

October 6, 2020
Decision Dated and Mailed

db/scn