

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERARDO DE HORTA
Claimant

BRANDFX, LLC
Employer

APPEAL 21A-UI-00950-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (4R)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Gerardo De Horta, the claimant/appellant, filed an appeal from the October 8, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 12, 2021. Mr. De Horta participated and testified through a Spanish interpreter with CTS Language Link. The employer did not participate. Official notice was taken of the administrative record.

ISSUES:

Is Mr. De Horta's appeal filed on time?
Is Mr. De Horta able to and available for work?
Is Ms. De Horta on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. De Horta at the correct address on October 8, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 18, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. October 18, 2020 was a Sunday; therefore, the deadline was extended to Monday, October 19, 2020.

Mr. De Horta did not receive the decision. Mr. De Horta reopened his claim effective October 11, 2020. At that point, Mr. De Horta learned that he had been denied benefits effective October 8, 2020 from his initial claim. Mr. De Horta then became confused about his initial claim and his reopened claim. Mr. De Horta called Iowa Workforce Development (Department) several times about his initial claim and his reopened claim. The Department requested additional information from Mr. De Horta about his October 11 reopened claim, including information to verify his authorization to work. The administrative record shows that

Mr. De Horta's authorization to work was verified on, or about, November 13, 2020. From one of the calls Mr. De Horta had with the Department he understood that he was to wait two to three weeks for someone to contact him about this claims. Mr. De Horta did not hear back from the Department. Mr. De Horta appealed the October 8, 2020 decision online on December 1, 2020. The appeal was received by Iowa Workforce Development on December 1, 2020.

The administrative law judge further finds: Mr. De Horta began working for the employer on June 19, 2019. In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Mr. De Horta self-quarantined from June 28, 2020 through July 11, 2020 because he had been exposed to someone who tested positive for COVID-19. Mr. De Horta returned to work on July 13.

Mr. De Horta's employment ended with the employer in this matter on July 20, 2020. Mr. De Horta left employment to accept a job at Seneca Foods/Marion Foods. He began working for that employer on August 1, 2020. He was separated from employment with Seneca Foods/Marion Foods on October 10, 2020.

The issue of Mr. De Horta's separation from employment from the employer in this matter and his separation from employment from Seneca Foods/Marion Foods has not yet been investigated by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. De Horta's appeal 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).

Mr. De Horta did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Mr. De Horta contacted Iowa Workforce Development several times about his initial claim and his reopened claim. Mr. De Horta was confused by the two claims. After Mr. De Horta submitted information verifying his authorization to work on, or about, November 13, 2020 Mr. De Horta still had not heard from the Department. Mr. De Horta filed his appeal on December 1, 2020, which is just over two weeks after November 13, 2020. While Mr. De Horta's appeal was submitted after the deadline, his delay was due to division error or misinformation. Mr. De Horta's appeal was filed on time.

For the reasons that follow, the administrative law judge concludes that Mr. De Horta is temporarily unemployed from June 28, 2020 through July 11, 2020.

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", 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(10) provide:

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.

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.

Mr. De Horta is temporarily unemployed. Mr. De Horta was unemployed from his job from June 28, 2020 through July 11, 2020 due to the COVID-19 public health emergency and he returned to his full-time job at his same wages and hours on July 13, 2020. Mr. De Horta has no other base-period wages. Partial benefits are allowed as long as he is otherwise eligible.

Although the employer was not offering Mr. De Horta the same employment at the time he was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment.

DECISION:

The October 8, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. De Horta. Mr. De Horta was partially unemployed from June 28, 2020 through July 11, 2020. Benefits are allowed, provided he is otherwise eligible. No charges shall be made to the employer's account.

REMAND:

The issue of Mr. De Horta's separation from employment from the employer in this matter and his separation from employment from Seneca Foods/Marion Foods is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



Daniel Zeno
Administrative Law Judge
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February 26, 2021
Decision Dated and Mailed

dz/scn