

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARROD A FREYLING

Claimant

APPEAL 17A-UI-13220-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/30/17

Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

The claimant/appellant filed a timely appeal from the December 8, 2017 (reference 06) unemployment insurance decision that denied benefits effective December 3, 2017 because claimant failed to report as directed. After due notice was issued, a telephone hearing was held on January 17, 2018. Claimant participated. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant file a timely appeal?

Did the claimant fail to report as directed or have good cause for doing so?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant moved in October of 2017 to a new address located in Oskaloosa, Iowa. He updated his new address with the postal service in October of 2017 and requested all mail be forwarded from his old address to his new address. He did not directly contact Iowa Workforce Development ("IWD") to update his address with the agency at this time.

Claimant had been mailed a notice for a fact-finding interview to be held on December 7, 2017. This notice was mailed to his old address. Claimant did not receive notice of the hearing prior to December 7, 2017. Claimant received the fact finder's telephone call on December 7, 2017 and returned the call on three separate occasions the same day in an attempt to resolve any issues.

On December 8, 2017, a decision finding that he failed to report as directed and that he was ineligible for benefits effective December 3, 2017 (reference 06) was mailed to claimant at his old address. This decision was not delivered to claimant at his new address; however, claimant received it on December 15, 2017 when he picked up mail at his old address.

The December 8, 2017 (reference 06) decision indicated that this decision becomes final unless an appeal is postmarked by December 18, 2017, or received by IWD Appeals Bureau by that date. Claimant did not read the portion of the decision regarding the appeal rights. Claimant immediately called his local IWD office in Ottumwa, Iowa on December 15, 2017. He updated his address with IWD on this date and was instructed by an IWD representative that he needed to come in person to the local office to file an appeal. The representative never told claimant that an appeal could be filed online, by fax, or sent in by regular mail. Claimant reported to his local office on December 20, 2017 and filed his appeal in person. Claimant did not report to his local office prior to December 20, 2017 to file an appeal because he could not find transportation from Oskaloosa, Iowa to Ottumwa, Iowa to file the appeal in person.

Claimant had reported when filing his weekly-continued claim for the week ending November 25, 2017 that he was not able to and available for work. This was an error in reporting. Claimant was able to and available for work for the week-ending November 25, 2017. Claimant has made appropriate work searches and has not earned any wages, holiday pay, vacation pay or pension pay for the week-ending November 25, 2017. When claimant had spoken to an IWD representative on December 15, 2017, he told the representative that he had made a reporting error.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the claimant did file a timely appeal.

Iowa Code § 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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 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. 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 § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(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 by any means other than the United States postal service on the date it is received by the division.

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

Date of submission and extension of time for payments and notices.

(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.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant has established that his delay in filing his appeal was due to the IWD representative instructing claimant that he had to file an appeal in person at his local office. This division error and misinformation caused the claimant to wait until he was able to find transportation to the local office, which was after the due date listed on the IWD decision denying him benefits. As such, the appeal shall be considered timely.

The next issue is whether the claimant failed to report as directed or had good cause for his failure to report. The administrative law judge concludes that he had good cause for his failure to report as directed.

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 Admin. Code r. 871-24.2(1)e provides:

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

(e) In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or on a selected debit card.

(2) In order for an individual to receive payment by direct deposit, the individual must provide the financial institution selected by the department with the appropriate bank routing code number and a checking or savings account number.

(3) The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.23(11) provides:

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

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

The notice was mailed to claimant's old address and he did not receive the mail until after the fact finding interview had concluded. He did not participate in the fact finding interview on December 7, 2017 because he did not know it was taking place. Once claimant received a voicemail message he attempted to contact the interviewer back on at least three occasions. As such, the claimant has provided a good cause reason for his failure to report as directed and he reported to IWD on December 15, 2017 that he had made a reporting error for the week ending November 25, 2017 and was able to and available for work. Claimant has provided a good cause reason for his failure to report as directed and benefits are allowed effective December 3, 2017, provided he is otherwise eligible.

DECISION:

The claimant filed a timely appeal. The December 8, 2017 (reference 06) unemployment insurance decision is reversed. The claimant has established a good cause reason for failing to report as directed. Claimant made a reporting error when he filed his weekly-continued claim for week-ending November 25, 2017. Claimant was able to and available for work. Benefits are allowed effective December 3, 2017, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs