

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUNG MYINT
Claimant

APPEAL 22R-UI-08267-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/17/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 1, 2020 (reference 05) unemployment insurance decision that denied benefits. Notice of hearing was mailed to the appellant's last known address of record for a telephone hearing scheduled for December 13, 2021, at 8:00 a.m. A review of the Appeals Bureau's conference call system indicates that the appellant failed to call the toll-free number listed on the hearing notice at the time of the hearing. No hearing was held.

On January 25, 2022, the claimant appealed this default decision to the Employment Appeal Board. On March 24, 2022, the EAB remanded this matter for re-hearing on March 24, 2022. 22B-UI-23296. The matter was rescheduled for April 27, 2022. The claimant, Aung Mynt participated through CTS Language Link Burmese Interpreter #14159. Debra Timmons, a volunteer with Embarc, Iowa, also participated on behalf of the claimant.

ISSUES:

Is the claimant's appeal timely?

Is the claimant a citizen or legally authorized to work in the United States?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant is a Burmese Refugee who lacks proficiency in the English language. This language barrier has created some hardship for the claimant and he was unable to meet the deadline for providing the required Identity Verification and Work Visa documentation. He did provide the required documentation once he was assisted by a representative from Polk County Family Enrichment Center. The deadline for submission of the required documentation was September 25, 2020. The claimant submitted his documents on September 30, 2020.

The claimant is not a citizen, but is legally authorized to work in the United States. He provided the necessary documentation proving that he is legally authorized to work on September 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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.

The ten calendar days for appeal begins running on the mailing 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).

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 Employment Appeal Board in their remand of the claimant's appeals for rehearing outlines the due process issues inherent in the claimant's late filings. Additionally, the claimant requested that the non-attorney representative that was assisting him with these matters be included on correspondence from IWD. She was not.

Here, the Claimant's lack of proficiency in English created a language barrier, which played a key role in the Claimant's ability to follow through with the hearing process. His inability to personally understand the Notice of Hearing affected his ability to respond to its contents, so did his lack the ability to effectively participate in the hearing. The Claimant's nonparticipation in the hearing was through no fault of the Claimant. Although the Claimant may have received the Notice of Hearing, it was not meaningful to him. There is no question that due process principles apply in the context of hearings for persons seeking unemployment benefits. Silva v. Employment Appeal Board, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. Iowa courts have held that due process requires "the opportunity to be heard at a meaningful time and a meaningful manner." Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The Claimant was not afforded due process rights. The Claimant was precluded from fully participating in the hearing before the administrative law judge because the notice was not "meaningful" when he received it and required further time and effort on his part to gain its meaning. While the Claimant was literally provided notice and the subsequent decision, these documents had no meaningful effect such that he could timely comply with either documents' instructions. Thus, the notice did not give the Claimant an opportunity to be heard at a meaningful time and in a meaningful manner. And his failure to understand the Notice of Decision due to the language barrier, surely affected his ability to timely respond. 22B-UI-23296.

The claimant's appeal is considered timely.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code section 96.5(10) provides:

An individual shall be disqualified for benefits:

10. *Aliens—disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such

services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

Iowa Admin. Code r. 871-24.60(2)a-c provides:

Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the immigration and naturalization service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 24.56(96), administrative penalties, and rule 871-25.10(96), prosecution on overpayments.

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 Admin. Code r. 871-24.22(2)o provides:

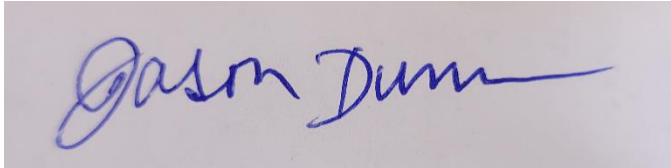
24.22(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

o. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

Claimant is lawfully authorized to work as he did present the appropriate documentation to the agency on September 30, 2020. The claimant is able to and available for work effective May 17, 2020.

DECISION:

The October 1, 2020, (reference 05) unemployment insurance decision is reversed. The claimant's submission of documents is deemed timely. Benefits are allowed effective May 17, 2020.



Jason Dunn
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June 20, 2022
Decision Dated and Mailed

jd/mh