IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

PRINTING SERVICES INC Claimant **IOWA WORKFORCE DEVELOPMENT DEPARTMENT**	**APPEAL 20A-VSW-00006-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **Employer: Appellant (1)**

Iowa Code § 96.40 – Voluntary Shared Work Program
871 IAC 24.58(96) – Voluntary Shared Work
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Printing Services (employer) appealed a representative's August 6, 2020, decision that concluded it was not eligible to participate in the Voluntary Shared Work Program (VSWP). After hearing notices were mailed to the last-known address of record for the parties, a telephone hearing was held on October 22, 2020. The employer participated by Hillary Meinke, Controller. Iowa Workforce Development (IWD) was represented by Brooke Axiotis, Attorney for the Agency, and participated by Mary Piagentini, Workforce Program Coordinator for Volentary Shared Work Program.

The administrative law judge took official notice of the administrative record. Exhibits D-1 and D-2 were received into evidence. The employer offered and Exhibit A was received into evidence. IWD offered and Exhibit One and Two were received into evidence.

ISSUE:

The issue is whether the employer meet the conditions for the Voluntary Shared Work Program.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On March 23, 2020, the employer submitted the Voluntary Shared Work (VSW) Plan Application. To apply, the employer had to go to the agency website dedicated to VSW. The site suggests that employers review Iowa Code Section 96.40 prior to completion of the application for the VSW program. A link to the code section was provided. The employer did not review the law.

On the website, the employer looked at "Frequently Asked Questions" and saw a question about whether an employer can "apply for VSW if layoffs have already occurred". The answer was

that the number of employees must remain unchanged during the plan. The employer had eight employees on layoff. It brought back seven employees before the plan started.

The employer had six groups in the plan that started in March 2020. A seventh group started in June 2020. The person who was laid off was a floater. He worked in all seven departments when there was an opening.

Due to the implementation of VSW, layoffs in the affected seven work units were not to occur. On August 5, 2020, the Controller wrote the Workforce Program Coordinator, "We have an employee coming back on from 100% furlough that will be participating in the VSW plan starting week ending 8/08/2020. I have attached his enrollment paperwork. Let me know if you need anything else. Jake will be participating in group unit 4." (Exhibit One)

On August 6, 2020, a representative's decision was issued determining the employer was not in compliance with Iowa Code 96.40(2)b and the and the PSI-4 work unit approval was revoked. (Exhibit D-1) The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 8, 2020. The employer filed an appeal to the decision on August 18, 2020. (Exhibit A) The Appeals Bureau did not receive the faxed appeal. The employer appealed again on September 16, 2020 after learning the Appeals Bureau did not receive its earlier appeal. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's appeal is 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 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 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 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 section 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The employer faxed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.40 provides:

1. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the department for approval.
   a. As a condition for approval by the department, a participating employer shall agree to furnish the department with reports relating to the operation of the shared work plan as requested by the department.
   b. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the department and shall report the findings to the department.
2. The department may approve a shared work plan if all of the following conditions are met:
   a. The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods.
   b. The plan certifies that the aggregate reduction in work hours is in lieu of layoffs which would have affected at least ten percent of the employees in the affected unit or units to which the plan applies and which would have resulted in an equivalent reduction in work hours. The employer provides an estimate of the number of layoffs that would occur absent participation in the program. *"Affected unit"* means a specified plant, department, shift, or other definable unit.
   c. The employees in the affected unit are identified by name and social security number and consist of at least five individuals.
   d. The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than fifty percent with a corresponding reduction in wages.
   e. The reduction in hours and corresponding reduction in wages must be applied equally to all employees in the affected unit.
   f. The plan provides that fringe benefits will continue to be provided to employees in affected units as though their workweeks had not been reduced or to the same extent as other employees not participating in the program. *"Fringe benefits"* means employer-provided health benefits and retirement benefits under a defined benefit plan or a defined contribution plan pursuant to the Internal Revenue Code.
   g. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.
   h. The employer certifies that the employer will not hire additional part-time or full-time employees for the affected work force while the program is in operation.
   i. The duration of the shared work plan will not exceed fifty-two weeks.

j. The plan is approved in writing by the collective bargaining representative for each employee organization or union which has members in the affected unit, and the plan provides for notification to employees in advance of participation.

k. Participation by the employer shall be consistent with applicable federal and state laws.

3. The employer shall submit a shared work plan to the department for approval at least thirty days prior to the proposed implementation date.

4. The department may revoke approval of a shared work plan and terminate the plan if the department determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the department that the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.

5. An individual who is otherwise entitled to receive regular unemployment compensation benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the department finds all of the following:

a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week.

b. The individual is able to work, available for work, and works all available hours with the participating employer.

c. The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than fifty percent, with a corresponding reduction in wages.

6. The department shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.

7. The department shall pay an individual wo is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment, less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the department shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be eligible for shared work benefits for any week in which the individual performs paid work for the participating employer for a number of hours equal to not less than twenty percent and not more than fifty percent of the normal weekly hours of work for the employee.

8. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 96.3, subsection 5, paragraph "a".

9. All benefits paid under a shared work plan shall be charged in the manner provided in this chapter for the charging of regular benefits. All benefits paid under a shared work plan shall be charged in the manner provided in this chapter for the charging of regular benefits.

a. An employer may provide as part of the plan a training program the employees may attend during the hours that have been reduced. Such a training program may include a training program funded under the Workforce Investment Act of 1998, Pub.L. No105-220. If the employer is able to show that the training program will provide a substantive increase in the workplace and employability

skills of the employee so as to reduce the potential for future periods of unemployment, the department shall relieve the employer of charges for future periods of unemployment, the department shall relieve the employer of charges for benefits paid to the individual attending training under the plan. The employee may attend the training at the work site utilizing internal resources, provided the training is outside of the normal course of employment, or in conjunction with an educational institution.

10. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year shall be considered an exhaustee, as defined in section 96.19, subsection 20, for purposes of the extended benefit program administered pursuant to section 96.26.

Iowa Admin. Code r. 871-24.58(4) provides:

Approval of a plan may be denied or revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

Iowa Admin. Code r. 871-24.58(5) provides:

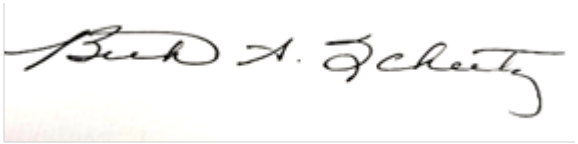
The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

VSW is an alternative to layoffs during declines in regular business activity. Work reductions are shared by reducing employee's work hours and unemployment insurance partially replaces lost earnings. By avoiding layoffs, employees keep their jobs and employers maintain their skilled workforce.

In this case, the employer treated one employee differently than all others and left him on layoff. The employer relied on a short answer to a question on the website rather than reading the law before making decisions about its enrollment. Clearly, employers may apply for VSW if they have layoffs prior to the application, but the law indicates they must treat all employees equally while on the plan. Iowa Code 96.40(2)e. This one employee should have been included in one of the seven groups. The employer was not in compliance.

DECISION:

The representative's August 6, 2020, decision is affirmed. The appeal in this case was timely. The decision revoking PSI4 approval for VSW is affirmed.



Beth A. Scheetz
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

bas/scn