

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHUONG P NGUYEN
Claimant

CITICORP CREDIT SERVICES INC USA
Employer

APPEAL 18A-UI-11158-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(5) – Wages in Lieu of Notice

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 19, 2018 (reference 05) unemployment insurance decision that found claimant was not eligible for unemployment benefits for the eight-week period ending September 29, 2018. The parties were properly notified of the hearing. A telephone hearing was held on December 3, 2018. The claimant, Phuong P. Nguyen, participated personally. The employer, Citicorp Credit Services Inc. USA, did not participate. CTS Language Link provided language interpretation services to the claimant. Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Did the claimant file a timely appeal?
Did the claimant receive wages in lieu of notice and if so, was it correctly deducted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

An unemployment insurance decision was mailed to the claimant's correct address of record on October 19, 2018 (reference 05). The decision stated that October 29, 2018 was the deadline to file an appeal if she disagreed with the decision. Claimant received the decision in the mail and approximately one week after receiving the decision, she visited with her local Iowa Workforce Development ("IWD") office about it. A representative at IWD told her that "everything was OK" and that her weekly claim benefits would offset any overpayment of benefits she received. Claimant only reads the English language a little bit and did not understand that she had to file an appeal to the decision on or before October 29, 2018. Claimant went back to IWD on or about November 14, 2018 and a representative at the IWD office helped her complete an appeal to the decision.

Claimant had been employed full-time for this employer from September of 2000 until August 3, 2018. She was laid-off and received a lump sum separation payment in exchange for signing

the separation agreement. See Exhibit D1 (paragraph 1). Claimant also received gross wages of \$577.00 per week from August 4, 2018 through October 2, 2018, regardless of whether she signed the separation agreement. See Exhibit D1 (paragraph 2). Claimant filed her initial claim for unemployment insurance benefits effective August 5, 2018. Her weekly benefit amount is \$371.00. The separation payment listed in paragraph 1 of the separation agreement was determined not to be deductible from unemployment insurance benefits. See Unemployment Insurance Decision issued August 9, 2018 (reference 01).

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 finds that the claimant's appeal shall be accepted as timely.

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 law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and 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(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.

(emphasis added).

Claimant credibly testified that she visited her local IWD office approximately one week after receiving the decision in the mail and was told, "everything was OK" by an IWD representative. Given the claimant's limited ability to read the English language and the fact that she was told that "everything was OK" by an IWD representative, the claimant has established that her delay in submission of her appeal was due to division error or misrepresentation. As such, her appeal shall be considered as timely.

The next issue is whether the amount of wages in lieu of notice was correctly deducted from the claimant's unemployment insurance benefits. The administrative law judge finds that it was.

Iowa Code section 96.5(5) provides in part:

An individual shall be disqualified for benefits:

5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

Iowa Admin. Code r. 871-24.13(3)c provides:

(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

The Unemployment Insurance Appeals Bureau of Iowa Workforce Development has historically interpreted severance pay to include a benefit used to attract employees or “conscience money” to help a former employee survive a lay-off. It has traditionally excluded from the definition of severance pay circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The greater weight of the evidence in the record indicates that paragraph 1 of the agreement arose out a negotiation wherein the claimant relinquished her right to file any further grievances between it and the claimant. However, under paragraph 2 of the agreement, claimant received her regular salary for 60 days during the notice period. Therefore, the payment of wages for the 60-day notice period in paragraph 2 of the agreement would be considered deductible wages for purposes of unemployment insurance benefits.

Claimant’s receipt of \$577.00 per week from August 5, 2018 through October 2, 2018 is deductible from her weekly unemployment insurance benefits payment as wages. Further, the weekly amount of \$577.00 is in excess of her weekly unemployment insurance benefit amount of \$371.00, plus \$15.00. As such, claimant is not eligible to receive unemployment insurance benefits for the eight-week period beginning August 5, 2018 and ending September 29, 2018 due to the receipt of wages in lieu of notice.

DECISION:

The claimant filed a timely appeal. The October 19, 2018 (reference 05) unemployment insurance decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits for the eight-week period beginning August 5, 2018 and ending September 29, 2018 due to receipt of wages in lieu of notice that exceeds her weekly benefit amount.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs