

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEONDRELL BURNETT
Claimant

APPEAL 22A-UI-09681-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/21/21
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work

STATEMENT OF THE CASE:

On February 17, 2022, Teondrell Burnett (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated January 21, 2022 (reference 12) that determined claimant was not eligible for unemployment insurance benefits from December 26, 2021 through January 1, 2022 based on a finding claimant did not make an adequate work search.

After due notice was issued, a telephone conference hearing was held on June 1, 2022. Claimant participated personally. Appeal Nos. 22A-UI-09668, 22A-UI-09669, 22A-UI-09670, 22A-UI-09671, 22A-UI-09672, 22A-UI-09673, 22A-UI-09674, 22A-UI-09677, 22A-UI-09678, 22A-UI-09680, and 22A-UI-09681 are related and were heard together, forming a single hearing record. Official notice was taken of the administrative record.

ISSUES:

Is the appeal timely?

Was claimant able to work, available for work, and searching for work?

FINDINGS OF FACT:

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

Claimant filed an original claim for benefits with an effective date of November 21, 2021. Claimant filed weekly continued claims through March 5, 2022 and again from the week ending April 2, 2022 through the week ending May 28, 2022. Claimant was for several weeks in December 2021 and January 2022 confused about how to properly report his ability and availability for work and work searches when filing his weekly claims. Claimant credibly testified that he was able to work, available for work, and earnestly and actively seeking work during each week filed.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 21, 2021. That was claimant’s correct address at that time. The decision states that it becomes

final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 31, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant appealed the decision on February 17, 2022. The delay in appealing was due to claimant not receiving the decision in a timely manner as a result of USPS error or delay. Claimant appealed shortly after learning he was denied benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated January 21, 2022 (reference 12) that determined claimant was not eligible for unemployment insurance benefits from December 26, 2021 through January 1, 2022 based on a finding claimant did not make an adequate work search is REVERSED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212

N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 delay in appealing was due to claimant not receiving the decision in a timely manner as a result of USPS error or delay. Claimant appealed shortly after learning he was denied benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.4 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

24.22(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found

by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

...

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

...

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

Claimant filed an original claim for benefits with an effective date of November 21, 2021. Claimant filed weekly continued claims through March 5, 2022 and again from the week ending April 2, 2022 through the week ending May 28, 2022. Claimant was for several weeks in December 2021 and January 2022 confused about how to properly report his ability and availability for work and work searches when filing his weekly claims. Claimant credibly testified that he was able to work,

available for work, and earnestly and actively seeking work during each week filed. The administrative law judge therefore finds claimant was able to work, available for work, and earnestly and actively seeking work during the week in question.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated January 21, 2022 (reference 12) that determined claimant was not eligible for unemployment insurance benefits from December 26, 2021 through January 1, 2022 based on a finding claimant did not make an adequate work search is REVERSED. Claimant is eligible for benefits during the week in question, provided he is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

June 2, 2022
Decision Dated and Mailed

abd/abd