

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GUSTAVO DERAS**  
Claimant

**ALISON INDUSTRIAL**  
Employer

**APPEAL 21A-UI-03336-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.6(2) – Timely Appeal  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code §96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Gustavo Deras, the claimant/appellant filed an appeal from the December 18, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2021. Mr. Deras participated and testified. The employer did not participate.

**ISSUES:**

Did Mr. Deras file his appeal on time?  
Is Mr. Deras totally or partially unemployed or able to and available for work?  
Is Mr. Deras still employed at the same hours and wages?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Deras at the correct address on December 18, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by December 28, 2020. Mr. Deras received the decision in the mail toward the end of December 2020. He called Iowa Workforce Development several times. Eventually, Mr. Deras was told him that he could file an appeal. Mr. Deras appealed the decision online on January 19, 2021. The appeal was received by Iowa Workforce Development on January 19, 2021.

The administrative law judge further finds that Mr. Deras began working for the employer on, or about, May 17, 2020 in Louisiana. He worked as a full-time scaffold building supervisor. The work ended in mid-July 2020. The employer continued to pay Mr. Deras at his regular pay for forty hours per week even though the project was over. The employer stopped paying Mr.

Deras on August 16, 2020. At that point, Mr. Deras was not working any hours for the employer and receiving no pay from the employer.

Mr. Deras has previously worked for employer TEI as a pipefitter in Texas. That job ended in April 2020. Mr. Brock testified that he filed for unemployment insurance (UI) in Iowa after ending the job in Texas because he received a letter saying he was eligible for benefits in Iowa. Mr. Deras had worked for Brock Services LLC in Iowa in second and third quarters on 2019.

On January 27, 2021, Mr. Deras began working for employer Brock Services LLC in Oklahoma.

The issue of Mr. Deras' separation from employment with this employer on August 16, 2020 and his separation from employment with TEI in Texas in April 2020 have not yet been determined by the Benefits Bureau of Iowa Workforce Development.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that Mr. Deras' appeal was filed on time.

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) 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 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law

judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Mr. Deras received the decision in the mail. He called Iowa Workforce Development because he disagreed with the decision. When the representative told Mr. Deras that he could file an appeal he did so. Mr. Deras' has established a good cause reason for his delay. Mr. Deras' appeal was filed on time.

The administrative law judge further concludes that Mr. Deras is totally unemployed from April 12, 2020, the effective date of his claim, through May 16, 2020, he is still employed with this employer at the same hours and wages as in his original contract of hire from May 17, 2020 through August 16, 2020 and he is totally unemployed from August 17, 2020 through January 26, 2021.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is

unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Mr. Deras is totally unemployed from April 12, 2020 through May 16, 2020, and again from August 17, 2020 through January 26, 2021 since he was paid no wages and performed no work during these time periods. Benefits are allowed during these time periods.

Mr. Deras is still employed with this employer at the same hours and wages as in his original contract of hire from May 17, 2020 through August 16, 2020. During this time period, the employer was offering him the same employment as in the base period contemplated at hire. Benefits are denied during this time period.

**DECISION:**

Mr. Deras' appeal was filed on time. The December 18, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Deras. Mr. Deras was totally unemployed from April 12, 2020 through May 16, 2020, and again from August 17, 2020 through January 26, 2021. Benefits are allowed during these time periods. Mr. Deras was employed with this employer at the same hours and wages as in his original contract of hire from May 17, 2020 through August 16, 2020. Benefits are denied during this period.

**REMAND:**

The issue of Mr. Deras' separation from employment with this employer on August 16, 2020 is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.

The issue of Mr. Deras' separation from employment with TEI in Texas in April 2020 is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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Daniel Zeno  
Administrative Law Judge  
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March 25, 2021  
Decision Dated and Mailed

dz/kmj