

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS L HENDERSON
Claimant

APPEAL 17A-UI-01322-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/04/16
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

Curtis L. Henderson (claimant/appellant) filed an appeal from the January 17, 2017, (reference 04), unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a telephone conference hearing was set for February 27, 2017. The claimant participated. Department's Exhibits D1 through D4 were received.

ISSUES:

Is the appeal timely?
Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: On December 29, 2016, a letter of inquiry was mailed to the claimant to report to IWD about his availability for work the week ending December 24, 2016 as he had indicated during his continued weekly claim for benefits that he was not able to and available for work that week. The letter of inquiry stated that it must be mailed back before January 9, 2017. The claimant did not receive the letter of inquiry before January 9, 2017.

On January 17, 2017, a decision finding the claimant had failed to report to Iowa Workforce Development as directed was mailed to the claimant stating he was ineligible for benefits effective January 8, 2017. The decision also contained a warning stating that an appeal needed to be submitted to the Appeals Bureau by January 27, 2017. The claimant did not receive the Unemployment Insurance Decision.

On or about January 18, 2017, the claimant received the letter of inquiry, which he faxed back to Iowa Workforce Development (IWD) on January 23, 2017 and requested a fact-finding interview. On January 25, 2017, a fact-finding interview was held regarding the claimant's ability to and availability for work beginning December 25, 2016. The claimant learned he had

been reporting his weekly claims incorrectly. The claimant also learned of the January 17, 2017 decision stating he did not report to IWD. On January 26, 2017, the agency issued a decision finding the claimant's availability to work had been questioned and he was available for work effective December 25, 2016, provided he continued to remain available for work. The claimant filed his appeal to the January 17, 2017 Unemployment Insurance Decision on February 4, 2017.

During this same time, the claimant had numerous decisions and notices being sent for another appeal he has regarding a decision that denied him benefits due to his separation. He had one hearing scheduled for the appeal to his separation in which an unfavorable decision was made. He then appealed to the Employment Appeal Board (EAB) who has remanded the case for another hearing that is scheduled on March 1, 2017 at 9:00 a.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely, the underlying issue has been corrected by subsequent agency action, and the claimant has established a good cause reason for having failed to report as directed. Benefits are allowed, if he is otherwise eligible. It should be noted, the claimant is currently disqualified for benefits due to his separation from his employer which will be addressed in a different appeal hearing.

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 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, subsection 10, 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant learned of the disqualification on January 25, 2017 during the fact-finding interview. He filed an appeal within a reasonable period of time, or within ten days, after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

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 Admin. Code r. 871-24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.23(11) provides:

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

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

Since he did not receive the letter of inquiry in a timely fashion, the claimant has established a good cause reason for failing to report as directed. When he did receive the letter of inquiry, he responded to the agency. Therefore, the claimant is eligible for benefits effective January 8, 2017, provided he is otherwise eligible.

DECISION:

The January 17, 2017, (reference 04), unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant has established a good cause reason for failing to report as directed. The underlying issue was addressed by subsequent agency action. Benefits are allowed effective January 8, 2017, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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