

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY KOHRS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 16A-UI-10642-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2016, (reference 04) unemployment insurance decision that denied benefits from August 21, 2016 through August 27, 2016. After due notice was issued, a hearing was held by telephone conference call on October 13, 2016. Claimant participated.

ISSUE:

Is the appeal timely?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on September 12, 2016. The appellant received the decision. It normally takes approximately two to three days to get mail from Des Moines, Iowa to the appellant's address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 22, 2016. The appeal was not filed until October 1, 2016, which is after the date noticed on the unemployment insurance decision. Claimant did not file her appeal after she received the decision because she had been told by an Iowa Workforce Development employee that she could ignore the decision.

On August 27, 2016, claimant filed a weekly voice response unit (VRU) continued claim for the week ending August 27, 2016. During the filing of the claim for the week at issue, claimant pushed a button in error indicating she was not able to and available for work. Claimant was able to and available for work for that week and made at least two employer contacts for that week. On Monday, August 29, 2016, claimant spoke to an employee at the IWD office in Des Moines about her mistake/error on her continued claim for the week ending August 27, 2016.

Claimant testified the IWD employee told her that he fixed her mistake/error, she would get her weekly benefits for the week ending August 27, 2016, and that she would get something in the mail about her claim because it goes out automatically. Claimant testified the IWD employee also told her that she could ignore what she got in the mail because he fixed the mistake/error. Claimant did receive her benefits for the week ending August 27, 2016.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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.

Claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD employee. Claimant found out about the misinformation upon receipt of the overpayment decision, which she timely appealed. This delay was prompted by and perpetuated by the agency. See Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was able to and available for work for the week ending August 27, 2016. The administrative law judge concludes claimant was able to and available for work for the week ending August 27, 2016.

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".

Claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that she mistakenly pushed the wrong button when during the filing of her claim for the week ending August 27, 2016. Claimant was able to and available for work for the week ending August 27, 2016. Accordingly, benefits are allowed.

DECISION:

The September 12, 2016, (reference 04) unemployment insurance decision is reversed. Claimant's appeal is timely. Claimant was able to and available for work the week ending August 27, 2016. Benefits are allowed, provided claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs