

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS A HIGGINS
Claimant

APPEAL 17A-UI-13021-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/26/17
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:

The claimant filed a timely appeal from the November 13, 2017, (reference 06) 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 January 12, 2018. Claimant participated.

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: When claimant filed his weekly continued claim for the week ending October 28, 2017, he mistakenly indicated he was not able to or available for work that week. He was able to and available for work that week. On November 3, 2017, a notice was mailed to the claimant to be available for a call from IWD on November 9, 2017, at 9:45 a.m. about his availability for work the week ending October 28, 2017. The claimant did not report because the claimant did not receive the notice.

On November 13, 2017, the reference 06 decision was mailed to claimant denying him benefits effective November 5, 2017. The decision states that the deadline by which to file an appeal is November 23, 2017. Claimant received the decision on November 15, 2017, and called the agency the same day. Claimant spoke with a representative of Iowa Workforce Development and explained he accidentally indicated he was not able to or available for work. The IWD representative indicated she would change the agency records to reflect claimant's availability. Claimant asked if he had to do anything else. The representative indicated everything was taken care of and that claimant should receive the benefit payment within the next couple of

weeks. Claimant received another decision from the agency that was mailed on November 21, 2017, indicating he was eligible for benefits. Claimant then assumed the payment would be coming a few weeks later. By December 11, 2017, claimant had not received any payment so he contacted the agency. He was instructed he needed to appeal the reference 06 decision, he filed the appeal on December 18, 2017.

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, in pertinent part:

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. . . . 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.

The claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. He found out about the misinformation when he did not receive a benefit payment. Claimant contacted the agency and was instructed to file an appeal. He filed the appeal within ten days of learning it was necessary to do so. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge further concludes the underlying issue was the result of a reporting error, and the claimant has established a good cause reason for having failed to report as directed.

Iowa Code section 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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or on a selected debit card.

(2) 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.

(3) 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 notice, claimant has established a good cause reason for failing to report as directed.

DECISION:

The November 13, 2017, (reference 06) unemployment insurance decision is reversed. The appeal is timely. The claimant has established a good cause reason for failing to report as directed. The underlying issue was the result of a reporting error. Benefits are allowed effective November 5, 2017, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn