

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELVIN ROTTER
Claimant

APPEAL 21A-UI-06917-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/13/20
Claimant: Appellant (1)

Iowa Code 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4) – Eligibility in a Second Benefit Year

STATEMENT OF THE CASE:

On March 6, 2021, Melvin Rotter (claimant) appealed a representative's February 15, 2021, decision (reference 01) that concluded he had not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year and was, therefore, not eligible to receive unemployment insurance benefits as of 12/13/20. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on May 17, 2021. The claimant participated personally. The administrative law judge took official notice of the administrative file. Exhibits D-1 and D-2 were admitted into the record.

ISSUE:

The issue is whether the claimant has requalified for benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The claimant filed for unemployment insurance benefits with an effective date of November 24, 2019. His weekly benefit amount during his 2019, claim year was \$149.00. After his 2019, benefit year ended, he filed a second year of benefits effective December 13, 2020. He has not earned any insured wages during or after his previous claim year.

A disqualification decision was mailed to the claimant's address of record on February 15, 2021. (Exhibit D-1) The claimant did not receive the decision until after February 25, 2021. The claimant cannot be sure when he received the disqualification decision, but the letter it was sent in is post-marked February 25, 2021. The appeal was sent immediately after receipt of that decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's untimely appeal has reasonable grounds to be considered timely.

Iowa Code section 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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 claimant 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not receive the decision until after the time for appeal had lapsed. He immediately filed his appeal in response. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is disqualified due to not being paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year and was, therefore, not eligible to receive unemployment insurance benefits as of 12/13/20.. The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.4(4)a-b-c provides:

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

a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual

during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

b. For an individual who does not have sufficient wages in the base period, as defined in section 96.1A, to otherwise qualify for benefits pursuant to this subsection, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under this subsection.

(1) Wages that fall within the alternative base period established under this paragraph "b" are not available for qualifying benefits in any subsequent benefit year.

(2) Employers shall be charged in the manner provided in this chapter for benefits paid based upon quarters used in the alternative base period.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

In order to be eligible to receive unemployment insurance benefits in a second benefit year, the claimant must show that he has been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year. The claimant's weekly benefit amount in 2019 was \$149.00. Eight times \$149.00 is \$1,192.00. The claimant stated during the hearing he has not received insured wages since filing his claim in 2019. Therefore, the claimant has not re-qualified for benefits since the separation and since the prior claim year separation decision. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 15, 2021, decision (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he has not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year unemployment insurance benefits.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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May 24, 2021
Decision Dated and Mailed

smn/ol