

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABDULLAHI M A UGAS
Claimant

APPEAL 17A-UI-00653-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/09/16
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(1) – Filing Claims
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 an appeal from the November 29, 2016, (reference 03) unemployment insurance decision that denied benefits because of a failure to report as directed. The claimant was properly notified about the hearing. A telephone hearing was held on February 10, 2017. The claimant participated personally and through two Somali interpreters with CTS language link.

Upon the closing of the hearing, the claimant continued to have multiple questions about his claim filing and had been unable to receive assistance at his local office. He most recently visited February 9, 2017. The administrative law judge closed the hearing record but allowed the claimant and interpreter to remain on the line and an IWD representative joined the call to answer the claimant's questions. The administrative law judge did not listen to the subsequent discussion (or audio recording containing the discussion) and wholly disregarded any information exchanged between the claimant and IWD representative when making her decision.

Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 reviewed all of the evidence in the record, the administrative law judge finds: The claimant has lived at his address since 2012 and shares the mail with four other roommates. A

notice of initial decision dated November 29, 2016, (reference 03) was mailed to the claimant, denying him benefits because he failed to report as directed to the department. The letter contained a warning that an appeal must be filed by December 9, 2016. The claimant is unsure when he received the decision but read it and understood it was unfavorable. Another notice of decision was mailed December 8, 2016, (reference 04), stating the claimant did not meet the availability requirements for the week ending November 5, 2016. The claimant received that decision but is unsure when. The decision contained a warning that any further appeal must be filed by December 18, 2016. He attempted to file "two or three" appeals in December at the local office in response to the reference 03 and 04 decisions, but they were not received by the Appeals Bureau. The claimant could not recall the exact dates of attempting to submit the appeals. The claimant then received a third decision dated January 9, 2017, (reference 05) stating he was overpaid benefits. The claimant filed another appeal at the local office on January 16, 2016 (Department Exhibit D-1).

During the week ending November 5, 2016, the claimant utilized the local office's assistance in the weekly filing of his claim. This is confirmed by the administrative record. During the recording of his claim, it was marked that he was not able to and available for work. The claimant was able to and available for work and believes there was a mistake or miscommunication with the language barrier. As a result of the claimant's weekly claim for the week indicating that he was not able to and available for work, he received a notice of inquiry dated November 9, 2016, requiring a response by November 21, 2016. The claimant received the letter and understood he must respond. The claimant attempted to fax his response after seeking help, on the due date. The response was not received by IWD. The claimant also stated he could not attend the fact-finding call because he was at IWD during the time attending a required class.

The claimant is currently searching for full-time employment, in and around Postville. He has applied for companies including Amazon and Agristar. The claimant's car is currently inoperable but he has transportation from friends for employment within the vicinity of Postville (but cannot accept work out of the state or far away). He has no medical restrictions or other limitations to employment.

The administrative law judge would recommend the claimant retain copies of any future appeal letters and communications with IWD, in case of any dispute or non-receipt by the agency.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Based on the evidence presented, the claimant made a good faith effort to file a timely appeal by way of visiting his local office. The claimant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

Further, the administrative law judge 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 § 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.

In this case, the claimant was assisted by an IWD representative in completing his weekly continued claim for the week ending November 5, 2016. The claimant is a native Somali speaker, and believes there was a miscommunication in information received between him and the IWD representative while the claim was processed. When he received the letter of inquiry, he requested assistance in correcting the error, as he was able to and available for work by way of fax on November 21, 2016, but it was not received. He missed the fact-finding call due to being in a required IWD class. Based on the evidence presented, the administrative law judge is persuaded that the underlying issue was the result of a reporting error and that the claimant made a timely, good faith attempt to respond to the letter of inquiry he received but it was not received by the agency. Therefore, the claimant did report as directed and is allowed benefits, provided he is otherwise eligible.

DECISION:

The November 29, 2016, (reference 03) unemployment insurance decision is reversed. 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 provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs