

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON D KINDRED
Claimant

MENARD INC
Employer

APPEAL 21A-UI-10408-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2021, (reference 03) unemployment insurance decision that denied benefits on the basis claimant was not able to work. The parties were properly notified of the hearing. A telephone hearing was held on June 28, 2021. Claimant Jason D. Kindred participated personally. Employer Menard, Inc. participated through human resources coordinator Krystal Boege. Claimant's Exhibits A-D were received. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant's appeal is timely?
Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective January 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed part time as an order pickup delivery team member at Menard's since August 26, 2019. He works approximately eight hours per week.

Claimant filed his initial claim for unemployment effective April 26, 2020, and reactivated his claim on January 10, 2021, due to a layoff from his full-time employer, Construction Products, Inc. The layoff occurred from January 18, 2021 until January 22, 2021. Claimant contacted Iowa Workforce Development to file his weekly claim; however, he did so after this week he was laid off. He spoke to a representative who stated she would file his weekly claim for him and backdate it to the week of January 17, 2021. However, the administrative record shows no weekly claim was filed.

A disqualification decision was mailed to claimant's last known address of record on March 25, 2021. He did not receive the decision within ten days. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 4, 2021. The appeal was not filed until April 14, 2021, which is after the date noticed on the disqualification decision. Claimant stated he did not receive the decision in time to file an appeal by the deadline. As soon as he received the decision, he promptly filed this appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is 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 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. Bd. 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. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant did not receive the decision in the mail prior the deadline to file an appeal. However, once claimant received the decision, he promptly filed this appeal. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes that the issue is moot.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 Code section 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

In order to be eligible for weekly benefits, the claimant must file a continued claim. Iowa Admin. Code r. 871-24.2(1)g. Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

Because the claimant has other base-period wages and is currently employed part-time, he may be considered partially unemployed. Partial benefits may be allowed if he is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period and contemplated at hire, no benefit charges shall be made to its account. Iowa Admin. Code r. 871-23.43(4)a.

However, claimant did not file a weekly claim for benefits the week of January 17, 2021, and missed the opportunity to seek benefits for that period. Therefore, there is no live case or controversy before the Appeals Bureau for that time period. The issue of whether claimant was available for that period is not relevant because no benefits were sought for those weeks. The issue of whether claimant was available effective January 10, 2021 is moot.

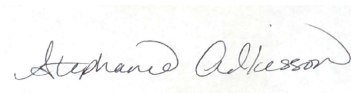
Sometime after claimant's one-week layoff, he spoke to an IWD representative who stated she would file his weekly claim and backdate it to the week of January 17, 2021. The administrative law judge does not have the legal authority to backdate the claim. Since the pandemic began, the Benefits Bureau has backdated claims in limited circumstances. Therefore, the administrative law judge will remand this matter to the Benefits Bureau for a determination on whether this is such a case and whether benefits can be released for the week ending January 23, 2021.

DECISION:

The appeal is timely. The March 25, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 10, 2021.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for consideration of whether the weekly claim can be filed and backdated, and if so, for the Benefits Bureau to then release payment for the one week ending January 23, 2021, when claimant was partially unemployed.



Stephanie Adkisson
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July 9, 2021
Decision Dated and Mailed

sa/kmj