

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TODD D VENENGA
Claimant

APPEAL 17A-UI-12291-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/05/17
Claimant: Appellant (1)

Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2017, (reference 02) unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's WBA in insured wages during or after the prior claim year. The party was properly notified about the hearing. A telephone hearing was held on December 20, 2017. Claimant participated. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's WBA during or after the previous benefit year to become eligible for a second benefit year?

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 November 16, 2017. Claimant last checked his mail at the post office box on the Tuesday before Thanksgiving, November 21, 2017, and there was no IWD mail. He left town on November 24 and returned November 28. He received the decisions at the post office box on November 29, 2017. The appeal was sent on November 30, 2017.

The claimant's WBA in the prior claim year effective October 16, 2016, is \$322.00. He wishes to claim benefits during a second claim year effective November 5, 2017. The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning October 16, 2016, and after his separation from Vogel Paint, Inc. As of the end of the third quarter of 2017, he has \$1,077.00 in gross wages towards the \$2,576.00 required for second benefit-year eligibility.

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 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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion while claimant was out of town. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal within one day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant is not eligible to receive benefits during the subsequent benefit year.

Effective July 2, 2017, Iowa Code section 96.4(4)a and c provides:

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

4. 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.

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.

Because the claimant did not demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning October 16, 2016, he is not eligible to receive benefits during the current claim year beginning November 5, 2017.

DECISION:

The November 15, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant's appeal is timely. He is not eligible to receive benefits during the current claim year beginning November 5, 2017. If claimant does earn eight times the prior claim year's WBA in insured wages he may present evidence of that to IWD to determine eligibility.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs