

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER J JOHNSON
Claimant

APPEAL 17A-UI-06070-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/26/17
Claimant: Appellant (4)

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 an appeal from the May 26, 2017, (reference 04), unemployment insurance decision that denied benefits based upon claimant's failure to report to the department as directed. After due notice was issued, a telephone conference hearing was scheduled to be held on June 29, 2017. 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 reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to the claimant's last known address of record on May 26, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 5, 2017. Claimant received the decision on June 8 or 9, 2017. The appeal was filed on June 14, 2017.

The claimant filed a weekly claim and mistakenly indicated she was not available for work during the week ending May 13, 2017. On May 18, 2017, a notice was mailed to the claimant to be available for a call from IWD on May 24 about her availability for work the week ending May 13, 2017. She received the notice, but missed the phone call. On June 5, 2016, claimant went to her local office to report that she mistakenly indicated she was not available during the week ending May 13, 2017, and missed the May 24 phone call. She was instructed to wait for the decision denying her benefits and to file an appeal. Claimant followed the instructions.

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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. 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 five or six days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant has established a good cause reason for failing 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. 871-24.23(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.

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.

In this case, despite receiving the notice, claimant did not report to the department as directed until June 5, 2017. Therefore, benefits are denied for the two weeks ending June 3, 2017, and are allowed thereafter.

DECISION:

The May 26, 2017, (reference 04) unemployment insurance decision is modified in favor of appellant. The claimant has not established a good cause reason for failing to report as directed on May 24, 2017, but did report on June 5, 2017. The underlying issue was the result of a reporting error. Benefits are allowed effective June 4, 2017, provided claimant is otherwise eligible. Benefits are denied effective May 21, 2017, through June 3, 2017.

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