

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROLANDO L ALVAREZ
Claimant

APPEAL NO. 14A-UI-09354-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 07/13/14
Claimant: Appellant (1)

Section 96.5-10 – Authorization to Work in the United States
Section 96.4-3 – Able and Available
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated August 7, 2014 (reference 02) that concluded he was not eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 30, 2014. The claimant participated personally. The employer was represented by Jacqueline Jones, Hearings Representative, and participated by Angela Branning, Human Resources Generalist. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 13, 2014 as a full-time sanitation assistant specialist. On April 1, 2014 the employer began reminding the claimant that his documentation to work in the United States would expire on July 16, 2014. The employer requested the claimant provide the employer with supporting documentation for his I-9. On July 16, 2014 the claimant's documentation expired and the employer could not legally employ the claimant. The claimant was late in requesting his documentation and has testified that he did not receive his valid documents until August 18, 2014. The employer told the claimant to reapply for work. The claimant did not. On September 18, 2014 the claimant moved from Sioux City, Iowa to Illinois.

A disqualification decision was mailed to claimant's last-known address of record on August 7, 2014. He did not receive the decision within ten days. The claimant received it on September 10, 2014. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 17, 2014. The appeal was not filed until September 10, 2014 which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 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 appealed as soon as he received notice of the decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able and available for work. The administrative law judge concludes he was not.

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 Code § 96.5-10 provides:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of § 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

When an employee fails to provide proof of citizenship or work registration, he is considered to be unavailable for work. The claimant did not provide supporting documentation to the employer at the time it was requested. At that time he was considered to be unavailable for work. The claimant is disqualified from receiving unemployment insurance benefits until he provides documentation to prove he is authorized to work in the United States.

DECISION:

The August 7, 2014 (reference 02) decision is affirmed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits until he provides documentation to prove he is authorized to work in the United States.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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