

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HIEU P HUYNH
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 20A-UI-00239-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 18, 2019 (reference 04) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he did not make an adequate work search from October 27, 2019 through November 2, 2019. The claimant was properly notified of the hearing. A telephone hearing was held on January 29, 2020. The claimant, Hieu Huynh, participated personally. CTS Language Link provided language interpretation services for the claimant. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant make an adequate work search from October 27, 2019 through November 2, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision dated November 18, 2019 (reference 04) was mailed to the claimant's correct address of record. He received the decision in the mail on an unknown date. The decision stated that an appeal must be filed by November 28, 2019. Claimant's administrative records establish that several unemployment insurance decisions have been mailed to the claimant. Claimant does not read the English language. Claimant sought the help of his daughter to translate the multiple decisions, including the November 18, 2019 (reference 04) decision. Claimant and his daughter had difficulty interpreting the multiple decisions that were mailed to him. Claimant's daughter misinterpreted the decision to the claimant and did not interpret the appeal deadline listed on the decision.

Claimant visited his local Iowa Workforce Development ("IWD") office where an IWD representative assisted the claimant in printing off a screen from the NMRO database in order to assist the claimant in filing multiple appeals on December 4, 2019. See Appeal documents.

This November 18, 2019 (reference 04) decision stemmed from the claimant reporting online that he did not make two employer contacts when he filed his weekly-continued claim for the benefit week of October 27, 2019 through November 2, 2019. Claimant reported this in error as he has made at least two employer contacts for each week that he has filed weekly-continued claims for benefits. Claimant was able to and available for work for the benefit week of October 27, 2019 through November 2, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal shall be accepted as timely. Further, claimant did make an adequate work search during the benefit week of October 27, 2019 through November 2, 2019. Benefits are allowed, provided claimant is otherwise eligible.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code § 96.6(2) states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). However, without timely notice of a disqualification, no meaningful opportunity for appeal exists. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, the claimant does not read the English language. He relies solely on a translator, his daughter, to interpret mail he receives from IWD. Claimant took steps to have the decision interpreted by his daughter but she misinterpreted it for him. Here, the claimant's lack of proficiency in English created a language barrier, which played a key role in the claimant's ability to have any meaningful opportunity to respond to the contents of the decision because he was not notified that a disqualification existed. While the claimant was literally provided a copy of the decision, the document had no meaningful effect such that he could timely comply with its instructions in filing an appeal. As such, claimant's appeal, which was filed six days after the appeal deadline, is considered timely due to the fact that his language barrier affected his ability to file a timely appeal.

The next issue is whether the claimant make an adequate work search from October 27, 2019 through November 2, 2019. The administrative law judge finds that he did.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The claimant credibly testified that he was able to and available for work and had been actively and earnestly seeking work during the benefit week of October 27, 2019 through November 2, 2019 by applying for full-time work with two employers.

As such, the claimant has sufficiently demonstrated to the satisfaction of the administrative law judge that he made adequate work searches for the benefit week of October 27, 2019 through November 2, 2019. Accordingly, benefits are allowed for October 27, 2019 through November 2, 2019, provided the claimant is otherwise eligible.

DECISION:

The claimant's appeal shall be considered timely. The November 18, 2019 (reference 04) unemployment insurance decision is reversed. The claimant was able to and available for work, and made an adequate search for work from October 27, 2019 through November 2, 2019. Benefits are allowed, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn