

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E ANDERSEN
Claimant

APPEAL 22A-UI-07343-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/02/22
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available/Work Search
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871—24.22(3) – Earnest and Active Search for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 25, 2022, claimant filed an appeal from the March 10, 2022, (reference 02), unemployment insurance decision that advised the claimant they were no longer considered temporarily unemployed and warned the claimant they must begin making a minimum of four employment contacts each week. After due notice was issued, a telephone conference hearing was held on May 9, 2022, and was held together with the hearing for appeal numbers 22A-UI-07345-AR-T, and 22A-UI-07346-AR-T. Claimant, Mark E. Andersen, participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant required to begin making employment contacts?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed with employer, Kopriva Marine, for 18 years. Throughout his time with the employer, the work has been seasonal. Claimant is a manager and drives a barge.

Claimant opened a claim for unemployment insurance benefits with an effective date of January 2, 2022. This was a new claim year. He had already been filing claims for benefits beginning November 21, 2021, due to the seasonal layoff.

Claimant returned to work in early April 2022. While claimant filed his claims for benefits between November 2021 and March 2022, work was not available to him through his employer. The claimant and employer have a mutual understanding that claimant's work will resume in the spring of each year.

The decision notifying claimant of the requirement to begin making work searches was mailed to claimant on March 10, 2022. He did receive the decision, though he could not remember when. However, he contacted Iowa Workforce Development (IWD) because a coworker had been informed he was still considered exempt from work search requirements. Claimant continued to maintain contact with IWD regarding this decision, as well as other work search decisions he received, because he was confused about the changes to his work search requirements. Finally, an IWD representative with whom claimant spoke told him he should appeal the decision if he disagreed with it. Claimant submitted his appeal on March 25, 2022.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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 claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. This delay was prompted by and perpetuated by the agency. See Iowa Admin. Code r. 871—24.35(2). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not exempt from making the minimum of four employment contacts on a weekly basis effective March 10, 2022.

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 96.1A(37)(c) provides:

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.

The Agency has taken a stricter stance on who is exempt from making work searches during seasonal unemployment. It does not appear that claimant's employment falls within a trade or profession that is deemed exempt by the Agency at this time. Accordingly, the decision warning claimant to begin making work searches must be affirmed.

DECISION:

The March 10, 2022, (reference 02), unemployment insurance decision is affirmed. Claimant's appeal is accepted as timely. Claimant is required to begin making employment contacts effective March 10, 2022. Therefore, the notice issued was appropriate.



Alexis D. Rowe
Administrative Law Judge

May 31, 2022
Decision Dated and Mailed

ar/scn