

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WAYNE A CASSAVOY
Claimant

APPEAL 19R-UI-06790-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/23/18
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On July 8, 2019, Wayne A. Cassavoy (claimant/appellant) filed an appeal from the June 14, 2019, reference 01, unemployment insurance decision that denied benefits from December 30, 2018 through ending February 9, 2019 based upon the determination he was not able to and available for work because he was in jail. After due notice was issued, a telephone conference hearing was held on September 19, 2019 and consolidated with the hearing for appeal 19R-UI-06791-SC-T. The claimant participated. Iowa Workforce Development (IWD) participated through Investigator Kasandra Ellenwood. The Department's Exhibits C through K were admitted without objection.

ISSUES:

Is the claimant's appeal timely?

Was the claimant able to work, available for work, and actively and earnestly seeking work from December 30, 2018 through the week ending February 9, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was laid off from his union job for the season during the week of November 12, 2018. He had exhausted the claim for benefits that was filed effective December 24, 2017 and did not expire until December 23, 2018. The claimant opened a new claim effective December 23, 2018.

When the claimant filed the claim, he agreed to read the unemployment insurance handbook online, but failed to do so. (Department's Exhibit J). The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook. (Department Exhibit I).

With respect to "Ability to Work and Available for Work," the handbook states:

Individuals must be able and available for work while claiming benefits. It is important to notify IWD of any condition or situation which would prevent the individual from working, accepting work, or looking for work the majority of the week. These situations may include, but are not limited to:

- Illness, injury, or hospitalization
- Being in jail
- Attending school
- Being on vacation or out of town
- No childcare
- No transportation

Individuals should contact IWD to report any changes that could affect their benefits. (Department Exhibit I-7).

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the non-fraud overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty. All overpayments are assessed interest of 1/30th of a percent per day until the debt is paid in full. Individuals with fraud debt are not eligible to receive benefits until the debt, including penalty, interest and fees have been paid in full. (Department Exhibit I-5).

The handbook also alerts claimants to consequences for providing false or fraudulent statements to collect benefits:

Fraud is knowingly providing false information or withholding information to receive UI benefits. Fraudulently collecting UI benefits is a serious offense. It can lead to severe penalties, which include:

- Criminal prosecution, fines and imprisonment
- Denial of future benefits by administrative penalty
- Repayment of fraudulently collected UI benefits, plus a 15 percent penalty and daily interest
- Wage garnishments and liens
- Interception of state and federal tax refunds

(Department's Exhibit I-3)

In addition, each week the claimant would complete a weekly continued claim, he would see a screen online which provided:

It is important that you answer all questions truthfully.

WARNING: Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing his weekly continued claim each week, the claimant had to check a box that stated he understood the warning message above and wished to proceed. (Department Exhibit K).

The claimant made arrangements to serve a jail sentence during the seasonal layoff that began the week of November 12, 2018. The claimant was in jail beginning January 3, 2019 and was released on February 10, 2019. He filed weekly continued claims for unemployment insurance benefits each week he was in jail from a cell phone. He reported he was able to and available for work. He confirmed he was truthful in his answers.

The unemployment insurance decision that disqualified the claimant from receiving benefits while in jail was mailed to the claimant's address of record on June 14, 2019. The claimant did not receive that decision. He had a follow-up conversation with Investigator Kasandra Ellenwood on June 28 and notified her that he had not received the decision due to a change of address. Ellenwood mailed a copy of the decision to the claimant's new address. The claimant's appeal was filed on July 8.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely, but he was not available for work during the period in question. Benefits are denied from December 30, 2018 through February 9, 2019.

I. Is the claimant's appeal timely?

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

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.

The claimant did not have an opportunity to appeal the investigator's decision because the decision was not received. Without 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 claimant discovered the disqualification on June 28 when he spoke to Ellenwood and filed his appeal within ten days of notification. Therefore, the appeal shall be accepted as timely.

II. Was the claimant able to work, available for work, and actively and earnestly seeking work from December 30, 2018 through the week ending February 9, 2019?

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 96.19(38)(c) provides:

Definitions.

38. Total and partial unemployment

c. 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.

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(12) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(12) If a claimant is in jail or prison, such claimant is not available for work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant has argued that he did not need to be available for work as he was laid off for the season and his employer did not have any work available to him. Claimants do not have to meet the requirements of Iowa Code section 96.4(3) if they are temporarily unemployed as defined in Iowa Code section 96.19(38)(c). According to that definition, claimants are only considered temporarily unemployed for the first four weeks they are laid off.

In this case, the claimant had been laid off for more than four weeks before filing his new claim for unemployment benefits; therefore, he was no longer considered temporarily unemployed. The claimant needed to be available for work and genuinely attached to the labor market to be eligible for unemployment insurance benefits. Iowa Admin. Code r. 871-24.22(2). The claimant was in jail from January 3 through February 10, 2019 which means he was not available for work. Iowa Admin. Code r. 871-24.23(12). Accordingly, he is not eligible for unemployment insurance benefits from December 30, 2018 through February 9, 2019.

DECISION:

The claimant's appeal is timely. The June 14, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was not available for work from December 30, 2018 through February 9, 2019. Benefits are during that period are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs