

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLY MASBRUCH

Claimant

APPEAL 19A-UI-08693-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/16/19

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for work
Iowa Code § 96.6(2) – Timeliness of Appeal
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/appellant, Shelly Masbruch, filed an appeal from the October 21, 2019 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that concluded she was ineligible for benefits effective October 13, 2019 because she failed to report as directed by a department representative. The claimant was properly notified about the hearing. A telephone hearing was held on November 27, 2019. The claimant participated. The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Claimant appeal letter) was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant able to work and available for work effective October 13-19, 2019?

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 unemployment insurance decision was issued on October 21, 2019 (reference 04) which found that the claimant was denied benefits effective October 13, 2019 due to her failure to report. The decision contained a warning that an appeal to the decision was due October 31, 2019. The claimant received the decision within the appeal period and called the customer service line as directed within the decision, for guidance. The IWD representative told the claimant that she must go online and register for work. She was not advised that she must also file an appeal to the initial decision. On October 25, 2019, the claimant completed the work registration as she had been directed and believed the issue had been resolved. The claimant called IWD a second time on October 28, 2019 to verify she had completed the requirements. She then learned from the IWD representative that even though she had completed the

requirements, and her claim was unlocked effective October 27, 2019, (See reference 05 decision) that she was still ineligible for the one week period ending October 19, 2019. She then filed her appeal on November 4, 2019 (Department Exhibit D-1).

Prior to the unemployment insurance decision dated October 21, 2019 (reference 04) which denied the claimant benefits, a notice to register for work was mailed to the claimant's last known address on September 27, 2019. The notice warned the claimant that failure to register on or before October 9, 2019 would result in a denial of benefits. The claimant did not receive the notice that instructed her to register for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has filed a timely appeal and has established a good cause reason for having failed to report as directed. Benefits are allowed effective October 13, 2019, provided the 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.

The parties have ten days from the date of mailing the decision to file an appeal. Iowa Code § 96.6(2). 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). 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 followed directions on the initial decision and contacted IWD within the prescribed period for guidance. She credibly testified that she was advised how to register for work to address the underlying issue within the unfavorable initial decision but not informed she must also appeal the decision to lift the suspension. She called IWD during the appeal period for guidance. The claimant's delay in filing her appeal was due to incomplete information by an IWD representative. Once the claimant learned that she needed to file an appeal as well, she did so. The claimant's appeal is considered timely.

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".

Iowa Admin. Code r. 871-24.2(1)e provides:

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

(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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

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.

In this case, the claimant did not receive the notice to register for work. As such, the claimant established a good cause reason for her failure to report as directed. Further, claimant registered for work at her local office on October 25, 2019. Therefore, benefits are allowed effective October 13, 2019, provided the claimant is otherwise eligible.

DECISION:

The October 21, 2019 (reference 04) decision is reversed. The claimant has established a good cause reason for failing to report as directed to register for work. Benefits are allowed effective October 13, 2019, provided the claimant is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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