

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IGNACIO LOPEZ
Claimant

BLATTNER ENERGY, INC
Employer

APPEAL 20A-UI-09052-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/22/19
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On July 28, 2020, Ignacio Lopez (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated July 16, 2020 (reference 03) that denied benefits as of May 31, 2020 based on a finding claimant was still employed in his job for the same hours and wages.

A telephone hearing was held on September 16, 2020. The parties were properly notified of the hearing. Claimant participated personally. Blattner Energy, Inc. (employer/respondent) participated by HR Assistant Karen Ellefson.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?
- IV. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on April 16, 2018. Claimant is still employed by employer. Claimant was laid off due to a lack of work from November 24 to December 2, 2019; from March 20 to May 28, 2020; and from September 11, 2020 to present. Claimant was otherwise able to and available for work during those periods of unemployment.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 16, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 26, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. The appeal deadline was therefore extended to July 27, 2020. The reason for the delay in the appeal is that claimant did not receive the decision until July 27, 2020. Claimant appealed the decision online the following day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The Iowa Workforce Development decision dated July 16, 2020 (reference 03) that denied benefits as of May 31, 2020 based on a finding claimant was still employed in his job for the same hours and wages is REVERSED. Claimant is eligible for benefits as set forth below.

Iowa Code § 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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212

N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

Claimant did not receive the decision until the due date. As such, claimant was denied a reasonable opportunity to assert the decision in a timely manner. Claimant acted quickly after receiving the decision by filing the appeal online the following day. The administrative law judge finds there exists good cause for the late appeal and the appeal is therefore timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "*totally unemployed*" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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 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".

Claimant was laid off due to a lack of work from November 24 to December 2, 2019; from March 20 to May 28, 2020; and from September 11, 2020 to present. Claimant was otherwise able to and available for work during those periods of unemployment. Claimant was therefore totally unemployed during the benefit week ending November 30, 2019; from the benefit week ending 28 and continuing through the benefit week ending May 30, 2020; and from the benefit week ending September 19, 2020, until he returns to work. Claimant is eligible for benefits during these periods, provided he otherwise meets all eligibility requirements.

DECISION:

Claimant's appeal was timely. The Iowa Workforce Development decision dated July 16, 2020 (reference 03) that denied benefits as of May 31, 2020 based on a finding claimant was still employed in his job for the same hours and wages is REVERSED. Claimant is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
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September 22, 2020
Decision Dated and Mailed

abd/scn