

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSH GINN
Claimant

APPEAL 19A-UI-02193-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/24/19
Claimant: Appellant (4R)

Iowa Code §96.4(3) – Able to and Available for Work
Iowa Code § 96.4(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 1, 2019 monetary determination. After due notice was issued, a telephone hearing was held on March 28, 2019. Claimant participated. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal to the monetary record?
Is the monetary record correct?

FINDINGS OF FACT:

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

Claimant filed his appeal to the March 1, 2019 monetary record on March 13, 2019. There was a delay from the postal service in delivering the monetary record to claimant's new place of residence, even though he had updated his address with the postal service.

Claimant worked for Iowa State University during the fourth quarter of 2017, the first quarter of 2018 and the second quarter of 2018; however, no wages were reported to Iowa Workforce Development by this employer. See Exhibit A. Wages were reported by this employer during the third quarter of 2018 on claimant's monetary record. Claimant held the same job title with this employer during the entire base period.

An investigation of whether wages earned from Iowa State University should be included as wages for the claimant's base period in the fourth quarter of 2017, the first quarter of 2018, and the second quarter of 2018 shall be remanded to the tax section of Iowa Workforce Development for a determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal to the monetary record. Further, it appears that based upon earnings with Iowa State

University, the claimant may have sufficient wages earned during his base period to make him monetarily eligible for benefits.

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.

The parties have ten days from the date of mailing 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).

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 delay in claimant filing his appeal to the monetary record was due to the delay of the United States postal service in promptly delivering the monetary record to him, even though he had promptly updated his address with the postal service. As such, his appeal shall be accepted as timely. Iowa Admin. Code r. 871-24.35(1)(a).

Iowa Code section 96.4(4)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

Iowa Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

The claimant has presented sufficient and credible evidence to establish that he has earned wages in the fourth quarter of 2017, the first quarter of 2018, the second quarter of 2018, and the third quarter of 2018 from Iowa State University (account # 069259). The matter of whether the wages should be included in the monetary record for claimant's base period shall be remanded to the tax section of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The claimant filed a timely appeal to the monetary record. The March 1, 2019, monetary record is modified in favor of appellant pending an investigation by the tax section of Iowa Workforce Development to include wages from Iowa State University (account # 069259) as set out in Exhibit A for the fourth quarter of 2017, the first quarter of 2018 and the second quarter of 2018.

REMAND:

The unrecorded wage issue delineated in the findings of fact is remanded to the tax section of Iowa Workforce Development for a determination of whether wages from Iowa State University (account # 069259) should be included as wages for the claimant's base period for the fourth quarter of 2017, the first quarter of 2018 and the second quarter of 2018. Claimant's monetary eligibility shall be reevaluated after that investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs