

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER L GOEMAAT
Claimant

CARE INITIATIVES
Employer

APPEAL 20A-UI-07727-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38)B – Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 20, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was still employed at the same hours and wages as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on August 13, 2020. The claimant, Heather L. Goemaat, participated personally. Peggy Pettyjohn participated as a witness for the claimant. The employer, Care Initiatives, did not participate. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant able to and available for work?
Is the claimant eligible for total or partial unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on May 20, 2020. The claimant received the decision in the mail on May 22, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 30, 2020. On May 23, 2020, the claimant contacted her local Iowa Workforce Development office and spoke to a representative who told the claimant she was noting her appeal for her over the phone and that it was in the computer system. Claimant did not receive any further information for several weeks. She contacted her local office again to follow up and another representative told her that her appeal needed to be in writing. The representative gave her the fax number to send it to. Claimant wrote an appeal and faxed it to the number given to her. The appeal was not received by the Appeals Bureau. The claimant, after hearing nothing about her appeal for several more weeks, called the Appeals Bureau directly. She was informed by a representative that no appeal had been received and to resubmit her written appeal. The claimant did so on July 10, 2020.

Claimant worked for this employer until April 12, 2020 when she was permanently separated from employment. She reported her permanent separation when she filed her original claim for benefits. Claimant has been able to and available for work for each week that she has filed her weekly-continued claims for benefits. Claimant has been earnestly and actively seeking work each week in which she has filed her weekly-continued claims for benefits.

The separation issue has not been investigated by the Benefits Bureau of Iowa Workforce Development. The issue of whether the claimant's separation from employment with this employer is disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

Iowa Code section 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 issued, 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 section 96.8, subsection 5.

The ten calendar days for appeal begins running on the issued date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the issuing date and the date this appeal was filed. 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).

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.

However, in this case, the claimant's delay in submission was due to agency error and misinformation because a representative told the claimant her appeal had been received on May 23, 2020. As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to division misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely.

The next issue is whether the claimant has been able to and available for work. The administrative law judge finds that she has been.

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 section 96.19,

subsection 38, paragraph "b", subparagraph (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 § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

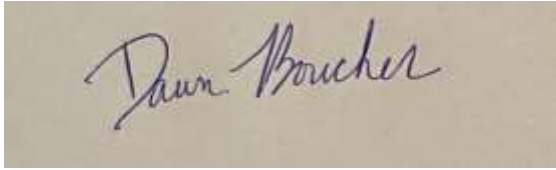
Claimant permanently separated from employment with this employer prior to filing her claim for unemployment insurance benefits. Claimant has been totally unemployed during each week in which she has filed her weekly-continued claims for benefits each week. Claimant has been able to and available for work and has been earnestly and actively seeking work. As such, benefits are allowed effective April 19, 2020, provided the claimant remains otherwise eligible.

DECISION:

The claimant's appeal shall be considered timely. The May 20, 2020 (reference 01) decision is reversed. Claimant is totally unemployed and she has established that she has been able to and available for work. Benefits are allowed effective April 19, 2020, provided the claimant is otherwise eligible.

REMAND:

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a determination of the allocation of charges.

A rectangular box containing a handwritten signature in dark ink. The signature is written in a cursive style and reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

August 20, 2020
Decision Dated and Mailed

db/sam