

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDRUW D POWELL
Claimant

DEERE & COMPANY
Employer

APPEAL 22A-UI-07487-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/10/21
Claimant: Appellant (1)**

Iowa Code § 96.5(4) – Labor Disputes
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Andruw D. Powell, appealed the November 24, 2021 (Reference 02) initial decision which denied benefits, concluding claimant was ineligible for benefits between October 14, 2021 and November 20, 2021 due to a labor dispute. After proper notice, a telephone hearing was held on May 10, 2022. The hearing was held together with Appeal 22A-UI-07487-JC-T. The claimant/appellant, Andruw D. Powell, participated personally. The employer/respondent, Deere & Company, did not participate. Official notice was taken of the administrative record. Department Exhibit 1 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:

Is the appeal timely?
Is the claimant disqualified from benefits due to a labor dispute?
Was the claimant able to and available for work effective October 14, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established his claim for unemployment insurance benefits with an effective date of October 10, 2021. Claimant filed claims for unemployment insurance benefits for the period of October 10, 2021 and November 20, 2021. Claimant received unemployment insurance benefits beginning October 10, 2021 through November 20, 2021.

Claimant began work for employer in April, 2021. Claimant worked for employer as a full-time assembler. Claimant works in the northeast Waterloo plant in Department 621. Claimant performed work in this position until October 10, 2021. At that time, labor dispute was initiated by employees concerning the terms and conditions of their employment.

Claimant is not a union member. He was directed by his supervisor not to report to work during the labor dispute. He was able and available for work during the labor dispute. He was not directly participating in, financing, or interested in the labor dispute which caused the stoppage of work.

However, claimant does belong to a class of workers which were employed at the premises where the stoppage occurred immediately before the commencement of the stoppage and who were participating in, financing, or directly interested in the dispute. Following the labor dispute, employees in claimant's position received favorable changes in the conditions of their employment, including an increase in pay.

Claimant returned to work after the labor dispute ended. He permanently separated from employment in December 2021.

An initial decision dated November 24, 2021 (reference 02) was mailed to claimant's address of record. Claimant's address of record at the time was his parent's house. He checks with his parents regularly for mail. Claimant did not receive the initial decision for unknown reasons. Claimant's first notification of the disqualifying decision was through a March 23, 2022 (reference 04) overpayment decision, which he timely appealed on March 27, 2022 (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

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 ten calendar days for appeal begins running on the mailing 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. Board 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 mailing 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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant in this case did not have the opportunity to appeal the initial 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 timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons set forth below, the administrative law judge concludes the claimant is ineligible for unemployment insurance benefits for the period of October 17, 2021 through November 20, 2021 due to a labor dispute.

Iowa Code section 96.1A(37) 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".

Iowa Code section 96.5(4) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

4. Labor disputes.

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Iowa Admin. Code r. 871-24.33(1) provides:

As used in sections 96.5(3)"b"(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

Iowa Admin. Code r. 871-24.34 provides in relevant part:

Labor dispute—policy.

(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

A claimant is disqualified from unemployment insurance benefits during a work stoppage caused by a labor dispute. A work stoppage due to a labor dispute must be the cause of unemployment to result in the striking worker's disqualification from receiving unemployment benefits. *Titan Tire Corp. v. Employment Appeal Bd.*, 641 N.W.2d 752 (Iowa 2002). A claimant is not disqualified from benefits during such a period if the claimant is not financing, participating in, or directly interested in the labor dispute personally **AND** does not belong to a class of workers who are financing, participating in, or directly interested in the labor dispute.

There is little guidance in Iowa statutes, administration regulations, and case law as to what constitutes “financing, participating in, or being interested in the labor dispute” within the meaning of the statute at issue. However, the plain meaning of “interest” supports a finding that at minimum others in claimant’s class of workers who were on strike were “interested in the labor dispute.” See INTEREST, Black’s Law Dictionary (11th ed. 2019) (defining interest as “the object of any human desire; esp., advantage or profit of a financial nature.”).

The labor dispute at issue here concerned the terms and conditions of the employment of the class of workers claimant belongs to. As noted above, following the labor dispute employees in claimant’s position - including claimant - received favorable changes in the conditions of their employment, including an increase in pay and benefits. Based on the evidence presented, the administrative law judge finds that being on strike in order to secure more favorable terms and conditions of employment constitutes “being interested in the labor dispute” within the meaning of the statute.

Case law from the Illinois Appellate Court, while not binding here, is persuasive. The Illinois corollary to the Iowa statute also provides that claimants are “ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute...” It also provides an exception where:

(A) the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and

(B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute

820 Ill. Comp. Stat. Ann. 405/604. The Appellate Court of Illinois has held that an employee who was not a union member was ineligible for unemployment benefits during the period that union members of his grade or class – who participated in and were directly interested in the labor dispute – were on strike. *Boone v. Dep’t of Lab.*, 495 N.E.2d 66, 68 (1986). Because the court found claimant belonged to an interested grade or class of workers it, did not reach the issue of whether the claimant was himself directly interested in the labor dispute to his receiving an increase in wages and benefits as a result of the strike. *Id.* The facts in *Boone* mirror the case at hand.

Based on the evidence presented, the administrative law judge concludes the claimant’s unemployment beginning the week of October 17, 2021 was due to a work stoppage caused by

a labor dispute. The administrative law judge finds this result is required by law, even though claimant is not a union member; was directed by his supervisor not to report to work during the labor dispute; was able and available for work during the labor dispute; and was not directly participating in, financing, or interested in the labor dispute which caused the stoppage of work.

Because claimant belongs to a class of workers which were employed at the premises where the stoppage occurred immediately before the commencement of the stoppage and who were participating in, financing, or directly interested in the dispute, claimant is disqualified from benefits during the labor dispute. Claimant is therefore disqualified from benefits during the labor dispute and unemployment insurance benefits are denied.

DECISION:

The decision dated November 24, 2021 (reference 02) that denied unemployment insurance benefits is affirmed. The appeal is timely. Claimant is disqualified from unemployment insurance benefits from October 17, 2021 through November 20, 2021 due to a labor dispute.



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May 20, 2022
Decision Dated and Mailed

jlb/scn