

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TERESA J VAN SLYKE
Claimant

APPEAL NO. 10A-EUCU-01044-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/14/08
Claimant: Appellant (1)

EUC Act of 2008
Section 96.19(20) – Emergency Unemployment Compensation Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Teresa Van Slyke, filed an appeal from a decision dated October 21, 2010, reference 01. The decision disqualified him from receiving emergency unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2010. The claimant participated on her own behalf. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant earned sufficient wages in the base period to qualify for emergency unemployment compensation benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of December 16, 2007. She reopened her claim for benefits with an effective date of December 14, 2008. The claimant received emergency unemployment compensation benefits for the seven-week period ending January 30, 2010, on her 2008 claim. She had already been paid those weeks in regular unemployment insurance benefits on her 2007 claim.

A disqualification decision was mailed to her address of record on October 21, 2010. The claimant did not receive the decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 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 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, subsection 10, 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 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 section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision, because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 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.

The next issue is whether the claimant was eligible to receive emergency unemployment compensation benefits for the seven-week period ending January 30, 2010.

In order for a claimant to be eligible for extended benefits, the EUC Act of 2008 requires an individual to have exhausted all of the benefits under the regular unemployment claim. The claimant was not eligible for emergency unemployment compensation for the seven-week period ending January 30, 2010, because she received regular unemployment insurance benefits for those same seven weeks.

DECISION:

The representative's October 21, 2010 decision (reference 01) is affirmed. The claimant's appeal is timely. The claimant was not eligible for emergency unemployment compensation for the seven-week period ending January 30, 2010, because she received regular unemployment insurance benefits for those same seven weeks.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw