

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HUNTER E HALVERSON
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL NO. 21A-UI-03445-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Hunter Halverson, filed a late appeal from the July 15, 2020, reference 01, decision that denied benefits for the period beginning March 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on March 24, 2021. The claimant participated. Jessica Wade represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and of the weekly claims (KCCO). In entering this decision, the administrative law judge has also considered March 24, 2021 correspondence from Sean Clark, Investigator II, Iowa Workforce Development.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.
Whether the claimant was partially unemployed during the period that began March 29, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Hunter Halverson, has at all relevant times been employed by The University of Iowa as a full-time research scientist. There was no break in the employment, no decrease in work hours, and no decrease in pay. The claimant did not take any steps to establish the original claim for benefits that was effective March 29, 2020 and instead was the victim of identity theft/fraud.

On July 15, 2020, Iowa Workforce Development mailed the July 15, 2020, reference 01, decision to the claimant's Iowa City last-known address of record. The reference 01 decision denied benefits for the period beginning March 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. The decision stated that the decision would be final unless an appeal was postmarked by July 25, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal

deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. July 25, 2020 was a Saturday and the next working day was Monday, July 27, 2020.

The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant concluded that the decision he received in the mail was an attempt to solicit further information for the purpose of making him the victim of identity theft/fraud, the mail equivalent of phishing. About a week after the claimant received the decision, he called the IWD customer service number and left a voicemail message. The claimant did not receive a return call. Based on the claimant's conclusion that the correspondence was fraudulent, the claimant did not take steps to file an appeal by the extended deadline.

The claimant did not give the matter more thought until he received the January 15, 2021, reference 02, decision that held he was overpaid \$3,367.00 in regular benefits for seven weeks between March 29, 2020 and May 16, 2020, based on the earlier decision that denied benefits in connection with the able and available determination. The reference 02 decision erroneously referred to January 14, 2021 as the date of the earlier decision, rather than the July 15, 2020 correct date. The overpayment decision included a January 25, 2021 appeal deadline.

On January 20, 2021, the claimant completed and transmitted an online appeal from the overpayment decision. The Appeals Bureau received the appeal on January 20, 2021 and treated it as also a late appeal from the July 15, 2020, reference 01, decision.

In connection with filing the appeal from the overpayment decision, the claimant contacted IWD to report that he had been the victim of identity theft, that he had not established the claim for benefits, and that he had not received any benefits. The claimant eventually connected with Sean Clark, Investigator II, IWD Investigations & Recovery Unit. The investigator concluded that the claimant had indeed been the victim of identity theft/fraud.

REASONING AND CONCLUSIONS OF LAW:

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, 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 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence establishes 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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). One 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

While the evidence establishes the claimant had a reasonable opportunity to file an appeal by the appeal deadline, the evidence also establishes good cause to treat the late appeal as a timely appeal. The original claim itself and the decisions that flowed therefrom arose from fraud wherein the claimant was the victim of identity theft. IWD erroneously allowed the claim to be established under the claimant's name and Social Security number. When the claimant received the reference 01 decision, he reasonably concluded that the correspondence was an attempt to make him the victim of identity theft. The claimant attempted to contact IWD to make further inquiry, but did not receive a response. Because the claimant had not established the claim, he had no reason to give the matter further thought until he received the January 15, 2021, reference 02, overpayment decision. At that point, the claimant did not unreasonably delay in filing his appeal. The administrative law judge concludes there is good cause, based on IWD error and the particular facts of this case, to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge further concludes he has jurisdiction to enter a decision on the merits.

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence establishes that the claimant has not been totally, temporarily or partially unemployed since March 29, 2020. Accordingly, benefits are denied for the period beginning March 29, 2020.

DECISION:

The July 15, 2020, reference 01, decision is affirmed. The claimant has not been totally, temporarily or partially unemployed since March 29, 2020. Benefits are denied for the period beginning March 29, 2020.



James E. Timberland
Administrative Law Judge

March 25, 2021
Decision Dated and Mailed

jet/kmj