

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON L BONNER
Claimant

MCANINCH CORP
Employer

APPEAL 15A-UI-08649-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/07/14
Claimant: Appellant (4-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)a & h(1) & (2) – Backdating
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was not partially unemployed as he was still employed for the same hours and wages as his original contract of hire. The parties were properly notified about the hearing. A hearing was held on August 25, 2015 at 1000 E Grand Avenue in Des Moines, Iowa. Claimant Jason Bonner participated on his own behalf. Employer McAninch Corp participated through Vice President of Finance Dave Stitz. During the course of the hearing both parties provided testimony related to backdating the claimant's unemployment claim to include the week ending May 30, 2015. As such, both parties have waived the ten-day notice period and the issue will be addressed in the decision. Employer's Exhibit 1 was received. Department's Exhibits D1 and D2 were received. Official notice was taken of the claimant's claim history; specifically, the database readout otherwise known as dbro.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?
Has the claimant shown good cause to backdate his claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed in a seasonal full-time position as an operator in the construction field. He is regularly laid off due to a lack of work between Thanksgiving and March of the following year. The rest of the year, when he is working, his schedule and work hours vary primarily based on the weather. The claimant knows if he works a certain amount he does not qualify for unemployment insurance benefits. However, for the week ending May 30, 2015, the claimant was not called into work until Friday and Saturday. He did not file to reopen his claim earlier in

the week because he believed he would be working more than the 22 hours by the end of the week. On Saturday, he and his co-workers were unable to work due to the weather. He worked 12 hours that week and earned a total of gross benefits in the amount of \$347.40. (Employer's Exhibit 1). The claimant reported to his local office on Monday, June 1, 2015 to file his claim. He was told by the person working at the local office that it was not worth filing as his benefits would be denied.

It was later explained to the claimant that he could get his claim reopened for four weeks at a time and then just call in his weekly claim and hours every week. Upon that advice, the claimant reopened his claim on June 14, 2015 and reported his wages for the benefit weeks ending June 20, June 27, and July 4, 2015. The claimant worked 31.5 hours and earned \$911.93 in gross wages for week ending June 20th; worked 22 hours and earned \$636.90 in gross wages for the week ending June 27th; and, worked 40 hours and earned \$1,273.81 in gross wages in week ending July 4th. (Employer's Exhibit 1). He did not expect to get benefits as he had earned too much in gross wages those weeks but wanted to keep his claim open so that he would not have the same situation as he had with the week ending May 30, 2015 where he was told it was too late to file his claim.

The claimant received the decision denying him benefits for the three weeks in which he reported his wages dated July 14, 2015. (Department's Exhibit D1). According to the decision, any timely appeal needed to be filed by Friday, July 24, 2015. During the week that encompassed the deadline, the claimant worked 81.5 hours. (Employer's Exhibit 1). The claimant did not report to the local office until Monday, July 27, 2015 to write his appeal and it was not received in the IWD Appeals Bureau until August 3, 2015. (Department's Exhibit D2).

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 § 96.6-2 provides in pertinent part:

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.

The claimant credibly testified that he does not have access to a computer. He lives in a rural area and does not own a computer. Additionally, he works in Des Moines during the week, but lives within the area of the local Ottumwa IWD office. The fact finder's decision was mailed to the claimant on Tuesday, July 14, 2015. Assuming three days for processing and mailing, the claimant would not have received his decision until Friday, July 17, 2015. The local office is only open Monday through Friday during normal business hours. During the week ending July 25, 2015, which encompassed his filing deadline of July 24, 2015, the claimant worked 81.5 hours. The claimant reported to his local office on the following business day to file his appeal. This was the first feasible opportunity the claimant had to file his appeal. The claimant

filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

It should be noted, while circumstances in this case were extenuating, the claimant does have a duty to abide by the timelines laid out in the Iowa Employment Security Act. He should talk to his local office about other opportunities or options he may have for filing his claims and appeals going forward.

The next issue is whether the claimant was partially unemployed and able or available for the weeks ending June 20, June 27, and July 4, 2015. The administrative law judge concludes he was not partially unemployed as defined by the Iowa Employment Security Act and, therefore, not able and available for work. Benefits are denied for those weeks.

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", 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 § 96.19-38 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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

For each of the three weeks the claimant was denied benefits, he worked 40 or fewer hours. So he met the requirement that he worked less than his regular full-time week. However, the claimant must also show that he earned less than his weekly benefit amount plus \$15.00. The claimant's weekly benefit amount is \$432.00; therefore, in addition to having fewer hours, he must also earn less than \$447.00 to qualify for benefits in any given week. During the weeks of June 20, June 27, and July 4, 2015, the claimant earned over \$447.00. His lowest week of earnings was the week ending June 27th in which he had gross earnings of \$636.90. The claimant was not partially unemployed during the weeks for which he filed his claim. However, for the week ending May 30, 2015, the claimant worked 12 hours earning gross wages in the amount of \$347.40 and he was partially unemployed for that week.

The final issue is whether the claimant's claim should be backdated to include benefits for the week ending May 30, 2015. The administrative law judge concludes the claimant has shown good cause to have his unemployment claim backdated.

Iowa Code § 96.6-1 provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)a provides:

- a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment shall report in person to the nearest workforce development center which takes claims and shall file an initial claim for benefits and register for work.

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) § 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

- g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

The claimant initially opened his claim on December 7, 2014. He collected benefits with no issue through the week ending March 21, 2015. After four weeks of not reporting wages, his claim closed. The claimant reported to his local IWD office on Monday, June 1, 2015, the next business day following the week he needed to reopen his claim and file for benefits. He credibly testified that he was discouraged from filing for benefits as it would be denied. The staff member gave the claimant misinformation as it appears he or she was referring to the weekly reporting of claims and did not address the issue of the claimant filing to reopen his claim. It

should be noted that if a person believes he or she has a legitimate claim for benefits, he or she is always encouraged to follow the process to file for those benefits. In this case, the claimant was discouraged and given misinformation about filing his claim. Misinformation about filing from an IWD representative is considered a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is allowed.

DECISION:

The July 14, 2015 (reference 01) decision is modified in favor of claimant/appellant. The claimant's appeal is timely. The claimant was not partially unemployed for the weeks ending June 20, June 27, or July 4, 2015; however, any week in which he worked for his employer less than regular full-time hours and he earned less than his weekly benefit plus \$15.00 he is considered partially unemployed. The claimant was partially unemployed for the week ending May 30, 2015 and his claim should be backdated to include benefits for that week.

REMAND:

The claimant's claim is remanded back to UISC for calculation and payment of his unemployment benefits for the week ending May 30, 2015, which is the week he was partially unemployed and earned gross benefits in the amount of \$347.40.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs