

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RARCHELLE L NOYE
Claimant

DEBRISTECH LLC
EMPLOYER

APPEAL 21A-UI-17883-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/18/21
Claimant: Appellant (2)**

Iowa Code § 96.6(3) – Appeals
Iowa Code §96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.19(1) – Determination and Review of Benefit Rights
Iowa Admin. Code r. 871-24.28 – Previous Adjudication

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 19, 2021 (reference 01) unemployment insurance decision that denied benefits to the claimant finding that the separation from this employer had been previously adjudicated in a previous claim year and remained in effect. After due notice was issued, a telephone hearing was held on October 6, 2021. The claimant participated personally. The employer did not participate. Claimant's Exhibits 1, 2, 3, and 4 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-17881-DB-T.

ISSUES:

Is the appeal considered timely?
Was the separation adjudicated in a prior claim year?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: A decision dated July 19, 2021 (reference 01) that found the claimant was not eligible for benefits due to the separation issue being previously adjudicated was mailed to the claimant's address of record. Claimant received the decision in the mail prior to the July 29, 2021 due date. Claimant contacted Iowa Workforce Development (IWD) and was given an email address to send her appeal to by the IWD representative. The email address given to her was incorrect. Claimant filed an appeal to the wrong email address on July 26, 2021 and July 27, 2021. She contacted IWD again and received the correct email address to file an appeal on August 12, 2021.

Claimant had filed an original claim for unemployment insurance benefits with an effective date of April 19, 2020. An unemployment insurance benefits decision was issued on July 19, 2021 (reference 01) that found the claimant's separation from employment with this employer was disqualifying.

Claimant filed an appeal to that separation decision and the decision was reversed, finding that the separation from employment with Debristech LLC was not disqualifying. See Appeal No. 21A-UI-17881-DB-T. Claimant filed another original claim in a subsequent benefit year effective April 18, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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.

In this case, the claimant received the decision in the mail; however, was given incorrect information from an IWD representative on how to file her appeal. The delay in her filing a timely appeal was due to division error or misinformation and shall be considered timely.

The next issue is whether the claimant's separation from employment has been previously adjudicated in a previous claim year. The administrative law judge finds that this separation was previously adjudicated in a previous claim year, but in favor of the claimant due to the Appeal No. 21A-UI-17881-DB-T.

Iowa Code section 96.6(3) provides:

3. Appeals.

a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision

of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Iowa Admin. Code r. 871-24.19(1) provides:

Determination and review of benefit rights.

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner of taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

Iowa Admin. Code r. 871-24.28(6) provides:

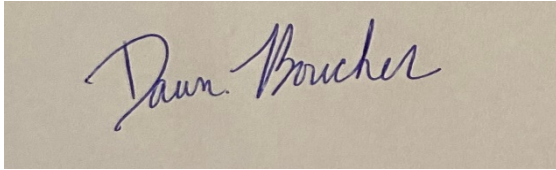
Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

No disqualification is imposed if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final. Iowa Admin. Code r. 871-24.28(6-8) and Iowa Admin. Code r. 871-24.19(1). Because the separation issue presented was resolved in a prior claim year and was found not to be disqualifying, the current decision, referring to the same separation from employment, is reversed so as to be consistent with the previous claim year. As such, the claimant's separation from employment with this employer was not disqualifying and benefits are allowed, provided the claimant remained otherwise eligible.

DECISION:

The July 19, 2021 (reference 01) decision is reversed. The claimant's discharge from employment with this employer was not disqualifying and the issue was previously adjudicated in a prior claim year by virtue of the decision in Appeal No. 21A-UI-17881-DB-T.



Dawn Boucher
Administrative Law Judge

October 8, 2021
Decision Dated and Mailed

db/kmj