

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD E SMITH**  
Claimant

**APPEAL NO. 07A-UI-00426-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 12-03-06 R: 02  
Claimant: Appellant (2)**

Section 96.4-3 –Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 28, 2006, reference 02, decision that required the claimant to make two in-person work searches. After due notice was issued, a hearing was held on January 30, 2007. The claimant did participate.

**ISSUES:**

Did the claimant file a timely appeal?

Is the claimant required to make two in-person work searches per week?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a truck driver part-time for several years. Every winter he is laid off when the weather becomes too cold to work and then is recalled in the spring when the weather warms up again and crews return to work. The claimant was erroneously coded as a group code 6 when he should have been coded as a group code 3, a temporary layoff. He returned to his local office and was told that his group code would be changed. When it was not changed he returned again and learned that he would need to file an appeal to pursue changing his group code. The claimant's appeal was late because he was told by a staff person at the local office that he did not need to pursue filing an appeal. The claimant was misled into believing that he need not file an appeal. The claimant should be classified as a group code 3, temporary layoff during the winter season.

**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 he was told by the local office that they would change his group code without an appeal. When the change did not take place the claimant was told he had to appeal, by which time his appeal period had expired. The only reason the claimant did not appeal earlier was because he had been told by the claims office that he did not need to. Therefore, the appeal shall be accepted as timely.

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".

The claimant is temporarily laid off due to weather conditions. He should be classified as a group code 3 not a group code 6. The claimant's work search is waived. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The December 28, 2006, reference 02, decision is reversed. The claimant's appeal is timely. The claimant's work search should be coded as a 3. The claimant's work search is waived. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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