

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGER W THOMAS
Claimant

DEERE & COMPANY
Employer

APPEAL 20A-UI-05785-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/27/19
Claimant: Appellant (4)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 15, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2020, at 10:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether the claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant was overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.
Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits effective October 27, 2019. An Unemployment Insurance Decision denying benefits was mailed to claimant at the correct address on November 15, 2019. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 25, 2019. Claimant learned of the decision after filing an additional claim effective May 31, 2020. Claimant appealed the decision online on June 10, 2020. Claimant's appeal was received by Iowa Workforce Development on June 10, 2020.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time material handler with Deere & Company. Claimant works Sunday through Thursday from 10:30 p.m. until 7:00 a.m. and earns \$22.84 per hour. Employer temporarily laid claimant off due to lack of work from October 20, 2019 until October 25, 2020. Claimant returned to work the following week and worked his regular hours until he was laid off by employer from May 10, 2020 until June 4, 2020 due to lack of work. Claimant worked one day during the third week of his four-week layoff. Employer paid claimant his full wages for that week. Claimant's weekly benefit amount is \$500.00. Claimant was able to and available for work from May 10, 2020 until June 4, 2020 and would have worked if employer had work available. Claimant filed weekly claims for the benefit weeks ending May 16, 2020, May 23, 2020 and June 6, 2020 and reported no wages earned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(c) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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). The 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). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal because he did not receive the decision issued on November 15, 2019. The delay in claimant's appeal was caused by delay or other action of the United States Postal Service. Accordingly, claimant's appeal is timely.

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed effective September 1, 2019.

Iowa Code section 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 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.

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 Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Claimant performed no work for employer for the week ending October 26, 2019. This week predates the effective date of claimant's initial claim for benefits. Therefore, claimant is not eligible for benefits for that week. Benefits are denied. No benefits were paid to claimant for the week ending October 26, 2019. Accordingly, claimant is not overpaid benefits for that week.

Claimant worked eight hours during the week ending May 30, 2020 and was paid wages for his full-time hours at his regular wage (40 hours per week x \$22.84 per hour = \$913.60 per week). Claimant earned more than \$515.00 (his weekly benefit amount plus \$15.00) for the week ending May 30, 2020. Therefore, claimant was not totally or partially unemployed. Benefits are denied for the week ending May 30, 2020. Claimant did not file a weekly claim for the week ending May 30, 2020; accordingly, claimant is not overpaid benefits for that week.

Claimant performed no work and earned no wages for the weeks ending May 16, 2020, May 23, 2020 and June 6, 2020. Claimant was totally unemployed. Claimant was able to and available for work. Benefits are allowed. Because benefits are allowed, the issue of overpayment for these weeks is moot. Because claimant is eligible for regular unemployment insurance benefits, he is also eligible for Federal Pandemic Unemployment Compensation for these weeks. See PL 116-136 §2104(B). For whatever period the employer was not offering the same wages and hours as contemplated in the contract or terms of hire it may be liable for benefit charges to its account.

DECISION:

Claimant's appeal is timely. The November 15, 2019 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed for the week ending October 26, 2020. Claimant is not eligible for benefits that week because it predates the effective date of claimant's initial claim for benefits; benefits are denied. Claimant was not unemployed the week ending May 30, 2020; therefore, benefits are denied. Claimant was

totally unemployed for the weeks ending May 16, 2020, May 23, 2020 and June 6, 2020 and was able to and available for work those weeks; therefore, benefits are allowed, provided claimant is otherwise eligible. The issue of overpayment is moot. Claimant is eligible for Federal Pandemic Unemployment Compensation. Employer's account may be liable for charges.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 17, 2020
Decision Dated and Mailed

acw/sam