

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L RUDE
Claimant

APPEAL NO. 10A-UI-02504-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 12/06/09
Claimant: Appellant (1)**

Section 96.4-4 – Qualification in a New Benefit Year
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brian Rude (claimant) appealed a representative's January 15, 2010 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he had not received wages of at least \$250.00 during or after his previous benefit year. After hearing notices were mailed to the claimant's last-known addresses of record, a telephone hearing was held on March 13, 2010. The claimant participated personally. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective December 7, 2008 after his employment with Synico ended in December 2008. The claimant exhausted the maximum benefit amount on the claim filed effective December 7, 2008. The claimant subsequently filed a claim for unemployment insurance benefits effective December 6, 2009. The claimant has not been paid wages of at least \$250.00 during or after his previous benefit year.

A disqualification decision was mailed to the claimant's address of record on January 15, 2009. The claimant did receive the decision and took it to the Iowa Workforce Development local office. The worker advised him not to file an appeal. The claimant received an overpayment decision on or about February 11, 2010. He filed an appeal to both decisions on February 11, 2010.

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 have an opportunity to appeal the fact-finder's decision but did not appeal because he was advised by the department not to appeal. The claimant timely appealed the overpayment decision. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant has not satisfied the conditions for eligibility in a new benefit year.

Iowa Code section 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on

or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

The statute requires that a claimant work in and be paid wages for insured work since the beginning of the previous benefit year in order to be eligible for benefits in a subsequent benefit year. The intent of the statute is to prevent a claimant from drawing benefits in two benefit years based on the same employment and separation from employment and require some new work and wages before receiving benefits in a second benefit year.

The record establishes that the claimant has not worked in or been paid wages for insured work of at least \$250.00 since he filed for unemployment insurance benefits in December 2008. Therefore, it is the conclusion of the administrative law judge that the claimant has not met the provisions of Iowa Code section 96.4-4 and that benefits were properly denied.

DECISION:

The representative's January 15, 2010 decision (reference 03) is affirmed. The appeal is considered timely. The claimant is not eligible to receive unemployment insurance benefits until he has earned at least \$250.00 in insured work and meets all other eligibility requirements of the unemployment insurance law.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw