

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AN T TRINH
Claimant

APPEAL 20A-UI-00652-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/15/19
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.2(1)(e) – Able & Available – Report as Directed by Department
Iowa Admin. Code r. 871-24.3(2) – Able & Available – Identity Verification

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 8, 2020 (reference 01) unemployment insurance decision that allowed benefits effective January 5, 2020, based upon a determination that claimant initially failed to provide verification of his identity but subsequently did so. Claimant was properly notified of the hearing. A telephonic hearing was held on February 20, 2020. The claimant, An T. Trinh, participated personally. CTS Language Link provided language interpretation services to the claimant. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant able to and available for work?
Did the claimant provide timely verification of his identity?
Did the claimant fail to report as directed by a department representative?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision dated January 8, 2020 (reference 01) was mailed to the claimant at his correct address of record. Claimant did not receive the decision in the mail. When the claimant did not receive payment for his unemployment insurance benefits, he went to the Iowa Works local office. He completed an appeal form at that time on January 23, 2020.

Claimant does not read English. He had previously received a notice stating he was required to provide qualifying proof of his identity to Iowa Workforce Development by December 26, 2019 in order to prevent his benefits from being delayed. Due to postal service courier error, claimant received this letter in the mail on January 6, 2020, which was after the December 26, 2019 due

date listed in the notice. Claimant immediately provided Iowa Workforce Development with proof of his identity.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal shall be considered timely and that the claimant provided timely verification of his identity to Iowa Workforce Development. Benefits are allowed effective December 15, 2019, provided he is otherwise eligible.

The first issue is whether the claimant filed a timely appeal of the unemployment insurance decision. The administrative law judge finds that his appeal shall be considered timely.

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.

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.

Iowa Code § 96.6(2) states an appeal must be filed within ten days after notification of that decision was mailed. The Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

The claimant did not have an opportunity to file a timely appeal because he did not receive the decision in the mail. Without timely notice of a decision, no meaningful opportunity for appeal exists. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the claimant's appeal shall be accepted as timely.

The next issue is whether the claimant failed to report to Iowa Workforce Development to provide proof of his identity as directed.

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...

Iowa Admin. Code r. 871-24.3(2) provides:

The claim will not become valid until the identity has been verified by the department...

Iowa Admin. Code r. 871-24.23(11) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

The administrative law judge finds that the claimant did not receive the notification to report in the mail until after the deadline listed in the letter. He provided sufficient verification

documentation the following day. Therefore, benefits are allowed effective December 15, 2019, provided the claimant is otherwise eligible.

DECISION:

The claimant's appeal is considered timely. The January 8, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant provided timely and sufficient proof of his identity to Iowa Workforce Development as directed. Benefits are allowed effective December 15, 2019, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn