

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CLAUDIA B SALMERON
Claimant

APPEAL NO. 15A-UI-04553-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/18/15
Claimant: Appellant (2)**

Section 96.5-10 – Authorization to Work in the United States
Section 96.4-3 – Able and Available
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated April 3, 2015, reference 02, that concluded she was not eligible to receive unemployment insurance benefits as of January 18, 2015. A telephone hearing was held on May 28, 2015, pursuant to due notice. The claimant participated personally through interpreter, Ike Rocha. Mirsa Benavides, the claimant's sister, also testified on behalf of the claimant. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was legally authorized to work in the United States.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was asked to provide evidence that she is authorized to work in the United States. The claimant provided an authorization card to IWD that was valid from February 26, 2014, to February 5, 2015. The claimant received her new authorization card on May 21, 2015. The new authorization card is valid from May 6, 2015, through May 5, 2016. The claimant provided a copy of the new valid employment authorization card to IWD on May 28, 2015.

A disqualification decision was mailed to claimant's last-known address of record on April 3, 2015. She did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 13, 2015. The appeal was not filed until April 14, 2015, which is after the date noticed on the disqualification decision.

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 § 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the claimant is available for work from January 18 through February 7, 2015, and as of May 24, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code section 96.5-10 provides:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of § 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

When an employee fails to provide proof of citizenship or work registration, she is considered to be unavailable for work. The claimant provided evidence on May 28, 2015, which supports a finding that she is authorized to work in the United States. She is considered to be available for work. The claimant is eligible to receive unemployment insurance benefits from January 18 through February 7, 2015, and as of May 24, 2015.

DECISION:

The April 3, 2015, reference 02, decision is reversed. The claimant is eligible to receive unemployment insurance benefits from January 18 through February 7, 2015, and as of May 24, 2015, so long as she is otherwise qualified.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css