

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**COLTON S CASON**  
Claimant

**APPEAL 18A-UI-10406-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/02/18  
Claimant: Appellant (5)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) - Able and Available  
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report  
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

**STATEMENT OF THE CASE:**

Colton S. Cason (claimant) filed an appeal from the October 5, 2018, reference 09, unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a telephone conference hearing was held on November 1, 2018 and was consolidated with the hearings for the appeals in 18A-UI-10403-SC-T, 18A-UI-10404-SC-T, 18A-UI-10405-SC-T, and 18A-UI-10407-SC-T. The claimant participated. The Department's Exhibits D1 through D5 were admitted into the record.

**ISSUES:**

Is the appeal timely?  
Did the claimant fail to report as directed or offer a good cause reason for failure to do so?  
Was the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: On or about September 24, 2018, a notice was mailed to the claimant to be available for a call from Iowa Workforce Development (IWD) on October 3, 2018 about his availability for work the week ending September 22, 2018. He did not receive the notice as the United States Postal Service (USPS) was delivering his mail to the wrong address. The claimant did not answer the fact-finder's phone call on October 3, 2018 because he has returned to work and is no longer claiming unemployment insurance benefits.

The unemployment insurance decision was mailed to the claimant's address of record on October 5, 2018 and contained a warning any appeal was due by October 15, 2018. He did not receive the decision until October 17, 2018, when his landlord notified him that his mail had been delivered to the leasing office. The appeal was sent immediately after receipt of that decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and he has established a good cause reason for having failed to report as directed. However, the claimant is not available for work effective September 30, 2018.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion as the USPS delivered it to the wrong address. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal the same day of receipt. Therefore, the appeal shall be accepted as timely.

Iowa Code § 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 Admin. Code r. 871-24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Since the claimant did not receive the notice to report, he has established a good cause reason for his failure to report. However, he is not available for work effective September 30, 2018, as he is working to such an extent that he is removed from the labor market. Benefits are denied effective September 30, 2018, until such time as the claimant reports to IWD he is no longer working.

**DECISION:**

The claimant's appeal is timely. The October 5, 2018, reference 09, unemployment insurance decision is modified with no change in effect. The claimant has established a good cause reason for failing to report as directed as he did not receive the notice to report. However, he began working to an extent that he was removed from the labor market effective September 30, 2018. Benefits are denied effective September 30, 2018, until such time as the claimant notifies IWD he is no longer employed.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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