

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RORY MCINTYRE**

Claimant

**DAVENPORT COMMUNITY SCH DIST**

Employer

**APPEAL 22A-UI-00042-JD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**

**Claimant: Appellant (4R)**

Iowa Code § 96.6 (2) – Timeliness of Appeal  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment

**STATEMENT OF THE CASE:**

On November 18, 2021, the claimant filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that denied benefits based on an Iowa Workforce Department representative's determination that claimant was not able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on January 20, 2022. Claimant, Rory McIntyre, participated and testified. Employer did not call the toll-free telephone number listed on the notice of hearing and did not participate. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant's appeal timely?  
Is the claimant partially unemployed and available for work?  
If so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant filed for unemployment benefits with an original claim date of April 26, 2020. During this base period claimant had qualified earnings from his full-time employer Nichols Aluminum and his part-time employer Davenport Community School District as a custodian. Claimant works year-round and averages 20 hours a week for his part-time employment. In April 2020, claimant's full-time employer, Nichols Aluminum, shut down for three weeks in late-April 2020 and reopened in mid-May 2020. Claimant was laid off from his full-time employer for those three weeks. The claimant returned to work when the plant re-opened, and he continues to work both his full-time job and Nichols Aluminum and his part-time job at Davenport Community School District.

Whether the claimant is eligible for benefits based on wage credits from his full-time employer Nichols Aluminum, Inc. has not been determined by the Benefits Bureau.

The claimant did not receive the reference 01 decision that was mailed on February 15, 2021. Claimant received two overpayment decisions (reference 02, 03) that were mailed on November 15, 2021. Claimant appealed both of those decisions on February 18, 2021, and was unaware that the reference 01 decision that disqualified him from receiving benefits had been issued.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely filed and claimant is partially unemployed. Further, the account of the part-time employer, Davenport Community School District (103399-000) shall be relieved of charges.

### *Timeliness of Appeal*

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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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.

In this case, the claimant never received the unemployment insurance benefits decision that denied benefits in Iowa effective April 26, 2020. Claimant received two overpayment decisions that were mailed on November 15, 2021, and he filed a timely appeal on November 18, 2021, on both of those decisions. As such, his appeal shall be considered timely as his delay in filing the appeal was due to delay or other action by the United States postal service.

*Partial unemployment and part-time employer's liability*

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 96.19(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 96.7(2)a(2)(a), (b), and (c) 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.

Because the claimant has other base-period wages and is currently employed part-time, he may be considered partially unemployed. Partial benefits may be allowed if he is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period contemplated at hire, no benefit charges shall be made to its account.

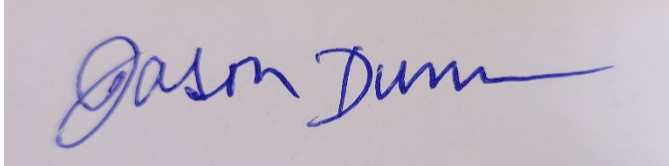
#### **DECISION:**

The February 16, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed, and benefits are allowed, provided he is otherwise eligible. The account of the current part-time employer Davenport Community School District (account number 103399-000) shall not be charged. The benefits withheld shall be paid to claimant, provided he is otherwise eligible. Claimant should report gross wages for the week

in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

**REMAND:**

The claimant's monetary eligibility issue from the base period wage history from Nichols Aluminum Inc. (employer account number 357601-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Jason Dunn  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Fax (515) 478-3528

February 11, 2022  
Decision Dated and Mailed

jd/scn