

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D PETERSON
Claimant

APPEAL NO. 07A-UI-00707-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 10/29/06 R: 04
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Matthew Peterson (claimant) appealed a representative's January 8, 2007 decision (reference 06) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with L. A. Leasing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant's appeal was filed in a timely manner and whether he refused suitable work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on January 6, 2007. The claimant did not receive the decision. The first notice of disqualification was the overpayment decision of January 9, 2007. The appeal was sent immediately after receipt of that decision.

The claimant was employed as a temporary worker from August 2006 through the present. The claimant filed a claim for unemployment insurance benefits with an effective date of October 29, 2006. The claimant's average weekly wage during his highest quarter of wages was \$331.58. On December 8, 2006, the employer offered the claimant a full-time job at Janarac during the sixth week of his unemployment which paid \$320.40. The claimant refused the offer of work because he thought the rate of pay was not high enough.

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 § 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 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.

The next issue is whether the claimant refused suitable work. The administrative law judge concludes he did.

Iowa Code § 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The work was offered within six weeks of the claimant's unemployment and was required to provide the claimant wages 75 percent of those paid to the claimant during the highest quarter of his base period. The evidence establishes that the claimant would have received at least 75 percent of his average weekly wages during his highest quarter of earnings. Based on the factors found in Iowa Code § 96.5-3-a, the work offered to the claimant was suitable work. The claimant is disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's January 8, 2007 decision (reference 06) is affirmed. The claimant's appeal is timely. The claimant is disqualified from receiving unemployment insurance benefits because he refused suitable work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css