

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JARED J KRUSER
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 19A-UI-00825-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18
Claimant: Appellant (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2019 monetary record. The party was properly notified of the hearing. A telephonic hearing was held on February 14, 2019. The claimant, Jerald A. Bowman, participated. Claimant's Exhibit A, consisting of pay stubs from pay he received in December 2018, was received and admitted into the record. Claimant's Exhibit B, consisting of a W-2 form and pay stubs from pay he received between May 2018 and December 2018, was received after the hearing ended and admitted into the record. The administrative law judge took official notice of the administrative record, including the green sheet.

ISSUES:

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's WBA during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The base period for the claim year effective December 23, 2018, covers the third and fourth quarters of 2017, and the first two quarters of 2018. Claimant's prior claim year began on December 24, 2017 and ended December 23, 2018. His weekly benefit amount for his prior claim year was \$455.00. Claimant's wage record shows he earned \$15,530.00 in the third quarter of 2017 and \$15,378.00 in the fourth quarter of 2017. Claimant's monetary record does not show that he received any wages in 2018. Claimant testified he was last employed by Morse Electric, where he has been employed the last eight years and is still employed. Claimant presented evidence of wages he received from Morse Electric in 2018 in the amount of \$59,673.58. (Claimant's Exhibit A). Claimant's weekly benefit amount for the current claim year is \$467.00.

The unemployment insurance decision was mailed to the appellant's address of record on January 14, 2019. The claimant/appellant received the decision within the appeal period. The decision contained a warning that the appeal was due January 24, 2019. Upon receiving the decision, the claimant called Iowa Workforce Development and spoke to a workforce advisor about what he could do about his missing wages. The workforce advisor directed claimant to email him a copy of his final pay stub, which claimant promptly did. When claimant went several days without hearing anything, he contacted a second workforce advisor, who told him there

was no record of his email and that he should file his appeal in addition to resending the email. Claimant promptly mailed in his appeal on January 28, 2019.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant'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 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, subsections 10 and 11, 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's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. He found out about the misinformation when he followed up with another workforce advisor and promptly filed his appeal upon the advice of that individual. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether claimant worked and earned sufficient wages to be eligible for benefits in a second benefit year. For the reasons that follow, the administrative law judge concludes the claimant is eligible to receive benefits during the subsequent benefit year.

Iowa Code section 96.4(4)a-c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual

during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

Because the claimant did demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning December 24, 2017, he is eligible to receive benefits during the current claim year beginning December 23, 2018.

DECISION:

The January 14, 2019, unemployment decision is reversed. The appeal is timely. The claimant is eligible to receive benefits during the current claim year beginning December 23, 2018.

REMAND:

The issue of claimant's unreported wages as delineated above is remanded to the Tax Bureau of Iowa Workforce Development for addition of wages according to the evidence contained in Claimant's Exhibit A.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs