

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH K LEABO**  
Claimant

**APPEAL NO. 09A-UI-07899-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/30/08**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(4) – Second Benefit Year Earnings Requirement  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Joseph Leabo filed an appeal from the April 23, 2009, reference 01, decision that denied regular unemployment insurance benefits effective November 30, 2008, based on the conclusion that Mr. Leabo had failed to meet the minimum earnings requirement to be eligible for benefits in a second benefit year. After due notice was issued, a hearing was held by telephone call on June 16, 2009. Mr. Leabo participated. Department Exhibits D1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Mr. Leabo in connection with the benefit year that started December 2, 2007 and the new benefit year that started November 30, 2008. The administrative law judge also took official notice of wages reported by or for Mr. Leabo for the two benefit years.

**ISSUE:**

Whether there is good cause to deem timely Mr. Leabo's late appeal from the April 23, 2009, reference 01 decision. There is.

Whether Mr. Leabo is eligible for regular unemployment insurance benefits during a second benefit year by having worked in and earned at least \$250.00 from insured work during or subsequent to the benefit year in which he collected benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Leabo established an original claim for unemployment insurance benefits that was effective December 2, 2007. From the time Mr. Leabo established that claim until May 19, 2009, Mr. Leabo did not have any employment. Mr. Leabo commenced new employment on May 19, 2009. In connection with the original claim that was effective December 2, 2007, Mr. Leabo received regular unemployment insurance benefits totaling \$13,533.00. Mr. Leabo exhausted his maximum benefit amount of regular benefits during the week that ended July 5, 2008.

Effective July 6, 2008, Mr. Leabo established a claim for extended unemployment insurance (EUCU) benefits. Mr. Leabo received \$2,425.00 in EUCU benefits for the period of July 6 through November 29, 2008. At that point the benefit year that had commenced on December 2, 2007 expired.

Mr. Leabo established a new original claim for regular unemployment insurance benefits that was effective November 30, 2008. In connection with that claim, Mr. Leabo received regular benefits totaling \$6,699.50 for the period of November 30, 2008 through April 18, 2009.

On April 23, 2009, Workforce Development mailed a copy of the reference 01, decision to Joseph Leabo's last-known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 5, 2009. Mr. Leabo received the decision in a timely manner, prior to the deadline for appeal. The reference 01 decision denied benefits effective November 30, 2008 and concluded that Mr. Leabo did not meet the minimum earnings requirements to be eligible for unemployment insurance benefits during a second benefit year. On May 1, 2009, Mr. Leabo took the decision to the Newton Workforce Development Center and spoke to an Agency representative. The Agency representative told Mr. Leabo there had been an error that had resulted in regular unemployment insurance benefits being paid out instead of the extended unemployment insurance (EUCU) benefits funded through federal tax dollars. On May 1, 2009, the Agency representative sent an e-mail message to the Unemployment Insurance Service Center (UISC) asking that "someone set up the overpayment and flip the claim back so he can start receiving benefits again." The Agency representative advised Mr. Leabo to wait until the anticipated overpayment decision arrived to file an appeal from the reference 01 decision and the expected overpayment decision. Based on this advice, Mr. Leabo took no further steps to appeal from the reference 01 decision at that time.

On May 19, 2009, Workforce Development mailed a copy of the reference 02 overpayment decision to Mr. Leabo's last-known address of record. Mr. Leabo received that decision in a timely fashion, prior to the May 29, 2009 deadline for appeal. On May 2, 2009, Mr. Leabo drafted an appeal from both decisions. Mr. Leabo mailed his appeal in an envelope that bears a May 28, 2009 postmark.

The May 19, 2009, reference 02 overpayment decision said that Mr. Leabo had been overpaid "\$3,256.00 for the twenty-eight weeks ending April 18, 2009. This is due to the decision dated 04-23-09, which disqualified you for a second benefit year. But Mr. Leabo had only received benefits for a 20-week period, November 30, 2008 through April 18, 2009. The total amount of regular benefits disbursed for that period was \$6,699.50. An Agency representative at the UISC had authorized additional EUCU benefits. Additional EUCU benefits were authorized for the period of November 30, 2008 through May 16, 2009.

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

The administrative law judge will first address the timeliness of appeal issue.

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, 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The appeal in this matter was filed on May 28, 2009, the postmark on the envelope in which the appeal arrived.

The evidence in the record indicates that Mr. Leabo did not file an appeal from the April 23, 2009, reference 01 decision by the May 5, 2009 appeal deadline because he relied upon advice he received from a Workforce Development representative. The representative erroneously advised Mr. Leabo to wait to file his appeal from the reference 01 disqualification decision until he received the overpayment decision that would follow. Mr. Leabo followed that advice and filed an appeal prior to the deadline for appealing the overpayment decision. Because the lateness of the appeal was based on erroneous advice from an Agency representative, the administrative law judge concludes there is good cause to treat as timely Mr. Leabo's appeal from the April 23, 2009, reference 01 decision. See 871 IAC 24.35(2).

The administrative law judge will next address Mr. Leabo's eligibility for regular benefits during a second benefit year.

Iowa Code section 96.4-4 provides:

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

4. 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 subsection 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.

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 two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

"Insured work" is employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act. 871 IAC 24.1(62).

Because Mr. Leabo did not have any employment from the time he established his claim for unemployment insurance benefits from the time he established the claim for regular benefits that was effective December 2, 2007 until May 19, 2009, Mr. Leabo had not met the minimum earnings requirement to be eligible for benefits during the second benefit year that started November 30, 2008.

The issue of Mr. Leabo's eligibility for extended unemployment compensation (EUCU) benefits was not before the administrative law judge and appears to have been decided in Mr. Leabo's favor at the claims level.

**DECISION:**

There is good cause to deem the claimant's appeal timely. The Agency representative's April 23, 2009, reference 01, decision is affirmed. The claimant did not meet the minimum earnings requirement to be eligible for the regular unemployment insurance benefits he received during the second benefit year that started November 30, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs