

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLYNN JENNINGS

Claimant

APPEAL 17A-UI-06386-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/26/17
Claimant: Appellant (2R)**

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:

The claimant/appellant filed a timely appeal from the June 12, 2017 (reference 02) unemployment insurance decision that denied benefits effective June 4, 2017 because claimant failed to report as directed. After due notice was issued, a telephone hearing was held on July 10, 2017. Claimant participated. Claimant's Exhibits A and B were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant fail to report as directed or have good cause for doing so?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

The claimant received the decision denying her benefits as of June 4, 2017 for her failure to report as directed. The decision was mailed on June 12, 2017. The decision stated that an appeal must be filed by June 22, 2017. Claimant faxed her appeal of the decision on June 19, 2017; however, her appeal was not received by the Appeals Bureau. See Exhibit A. Claimant contacted the Appeals Bureau on June 23, 2017 regarding her appeal and learned that it had not been received. Claimant immediately faxed her appeal again on June 23, 2017.

The claimant reported she refused an offer of work when filing her weekly continued claim for the benefit week ending May 27, 2017. She reported this information correctly as she was offered a job, which she refused.

A notice was mailed to the claimant to be available for a call from Iowa Workforce Development (IWD) on June 9, 2017. The claimant received the notice from Iowa Workforce Development,

on Sunday, June 11, 2017, when she returned home from a trip to Michigan. Claimant was in Michigan to interview for a job. Claimant did not receive a telephone call for the fact-finding interview or a voicemail message on June 9, 2017 because her cellular telephone did not have service in the area of Michigan where she was staying. The claimant immediately contacted Iowa Workforce Development on Monday, June 12, 2017 to resolve the underlying issue but was told that she needed to file an appeal, which she did.

The issue of claimant's refusal of an offer of work for the week ending May 27, 2017 shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

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 Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant filed a timely appeal when she faxed her appeal to Iowa Workforce Development on June 19, 2017. Exhibit A establishes that the claimant did fax her appeal to the agency on this date. 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(11) provides:

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.

The claimant did not receive the telephone call from the Iowa Workforce Development representative on June 9, 2017 because her cellular telephone did not have service in the area where she was. Claimant was unaware of the fact-finding interview scheduled for June 9, 2017 because she had not received the notice while she was in Michigan. The following week, Monday, June 12, 2017, claimant reported to Iowa Workforce Development to resolve the underlying issue of her refusal of an offer of work, however, she was told to file an appeal.

Claimant has established a good cause reason for having failed to report as directed because she did not receive the notice in the mail prior to the fact-finding interview. Benefits are allowed, provided she is otherwise eligible and the issue of whether claimant refused a suitable offer of work will be remanded for investigation and determination by the Benefits Bureau.

DECISION:

The June 12, 2017 (reference 02) unemployment insurance decision is reversed. The claimant filed a timely appeal. The claimant has established a good cause reason for failing to report as directed. Benefits are allowed effective June 4, 2017, provided she is otherwise eligible.

REMAND:

The issue of claimant's refusal of an offer of work during the week ending May 27, 2017 shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs