

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA D BURGSTRUM
Claimant

APPEAL NO: 14A-UI-02955-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/24/13
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available/Work Search
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Linda Burgstrum (claimant) appealed a representative's November 18, 2013, decision (reference 04) that denied an unemployment insurance benefits that found the claimant did not make an adequate search for work for the week ending October 26, 2013. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 9, 2014. The claimant did participate. Department's Exhibit D-1 was admitted to the record.

ISSUE:

The issue is whether the appeal was filed in a timely manner and if so whether the claimant made an adequate search for work during the week ending October 26, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of March 24, 2013. During the week ending October 26, 2013, the claimant searched for work at Coast Trucking, Jack Links, and Slate Advertising. When she reported her work search to the department she pushed the wrong button resulting in a response that showed less than two job searches.

A disqualification decision was mailed to claimant's last-known address of record on November 18, 2013. She did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 28, 2013. The appeal was not filed until March 14, 2014, which is after the date noticed on the disqualification decision.

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 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 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 made an active and earnest search for work. The administrative law judge concludes she did.

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".

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge an active and earnest search for work for the week ending October 26, 2013. Accordingly, benefits are allowed.

DECISION:

The November 18, 2014, reference 04, decision is affirmed. The claimant's appeal is timely. The claimant is eligible to receive unemployment insurance benefits for the week ending October 26, 2013.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css