

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN C VARGAS

Claimant

APPEAL NO. 16A-UI-10042-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC – DUBUQUE WORKS

Employer

OC: 07/31/16

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(c) – Temporarily Unemployed
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Justin Vargas filed an appeal from the August 18, 2016, reference 01, decision that denied benefits effective July 31, 2016, based on an agency conclusion that Mr. Vargas was still employed same hours and wages as existed in the original contract of hire. After due notice was issued, a hearing was held on September 29, 2016. Mr. Vargas participated. Ryan Moode, Labor Relations, represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

During the hearing, the claimant expressed that his claims for the week ending August 6 and 13, 2016 had been made in error due to a miscommunication with a supervisor and that he was not requesting benefits for those two weeks. The claimant expressed that he had received vacation pay equivalent to a week's wages for the week that ended August 6, 2016 and that he was back at work full-time during the week that ended August 13, 2016. During the hearing, the claimant expressed that he was appealing the reference 01 decision only as it pertains to the benefit week that ended August 20, 2016. The administrative law judge hereby finds good cause to narrow the scope of this decision to the week that ended August 20, 2016.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant was able to work and available for work during the week that ended August 20, 2016.

Whether the claimant was temporarily laid off during the week that ended August 20, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Justin Vargas is employed by John Deere CEC – Dubuque Works as a full-time welder. The employer

laid him off for the week of August 14-20, 2016 for what the employer terms an inventory layoff week. Mr. Vargas was available for work that week, was able to work that week, and did not refuse any work that week. Mr. Vargas returned to work the following week.

On August 18, 2016, Iowa Workforce Development mailed the August 18, 2016, reference 01, decision to Justin Vargas at his last known address of record. The decision denied benefits effective July 31, 2016, based on an agency conclusion that Mr. Vargas was still employed same hours and wages as existed in the original contract of hire. The decision stated that an appeal from the decision must be postmarked by August 28, 2016 or received by the Appeals Section by that date. Mr. Vargas did not receive the decision. Mr. Vargas had participated in the August 17, 2016 fact-finding interview. After the fact-finding interview Mr. Vargas waited to see whether benefits landed in his bank account. None did. On September 15, 2016, Mr. Vargas went to the Dubuque Workforce Development Center. While there, Mr. Vargas completed an appeal form and delivered the completed appeal form to the Workforce Development Center staff. The Appeals Bureau received the appeal by fax on September 15, 2016.

REASONING AND CONCLUSIONS OF LAW:

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 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). 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).

Mr. Vargas' appeal was filed on September 15, 2016, when he delivered the completed appeal to the Dubuque Workforce Development Center staff.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that Mr. Vargas did not have a reasonable opportunity to file a timely appeal by the appeal deadline because he did not receive the August 18, 2016 decision. The evidence establishes good cause to treat the appeal as a timely appeal. See 871 IAC 24.35(2). The administrative law judge has jurisdiction to enter a decision on the merits.

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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The evidence establishes that Mr. Vargas was able to work and available for work during the week that ended August 20, 2016, but was temporarily laid off. Mr. Vargas is eligible for benefits for the week that ended August 20, 2016, provided he meets all other eligibility requirements. The employer's account may be assessed for the benefits paid to Mr. Vargas for the week that ended August 20, 2016.

DECISION:

The claimant's appeal was timely. The August 18, 2016, reference 01, decision is modified as follows. The claimant was able to work and available for work during the week that ended August 20, 2016, but was temporarily laid off. The claimant is eligible for benefits for the week that ended August 20, 2016, provided he meets all other eligibility requirements. The employer's account may be assessed for the benefits paid to the claimant for the week that ended August 20, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs