

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADIS SMAJLOVIC
Claimant

APPEAL 21A-UI-14876-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/21/21
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

Adis Smajlovic, the claimant/appellant, filed an appeal from the April 5, 2021, (reference 02) unemployment insurance decision that concluded he was not eligible for REGULAR unemployment insurance (UI) benefits because of a lack of at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. A telephone hearing was held on August 26, 2021. Mr. Smajlovic was properly notified of the hearing date and time. Mr. Smajlovic participated and testified. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Is Mr. Smajlovic's appeal filed on time?
Did Mr. Smajlovic 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 the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Smajlovic at the correct address on April 5, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 15, 2021. Mr. Smajlovic received the decision in the mail. He called IWD and the representative told him he did not need to take any action because his claim would be kicked backed to a previous employer.

IWD issued a different decision, dated June 30, 2021, the denied benefits based on a voluntary quit. Mr. Smajlovic received that decision. He filed an appeal online on July 1, 2021. The appeal was received by Iowa Workforce Development on July 1, 2021.

The administrative law judge further finds: Mr. Smajlovic established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the Mr. Smajlovic's weekly benefit amount at \$481.00. Mr. Smajlovi was separated from employment

with Von Maur Inc as of August 19, 2020 when he voluntarily quit. Mr. Smajlovic received regular unemployment insurance (UI) benefits, and Federal Pandemics Unemployment Compensation (FPUC) benefits in connection with the claim. The claim year expired on March 21, 2021.

Mr. Smajlovic established a new original claim and a new claim year that was effective March 20, 2021. Iowa Workforce Development sent Mr. Smajlovic a monetary record that acknowledged his base period wages and that set his weekly benefit amount at \$493.00. Mr. Smajlovic worked at the United States Postal Service (USPS) from August 29, 2020 through January 10, 2021. He worked as a full-time rural mail carrier and he was paid about \$18.00 per hour. Mr. Smajlovic's 2020 W-2 from USPS shows more than \$11,000.00 in wages paid to Mr. Smajlovic. Neither the DBRO screen, Wage-A screen, or FLAG screen show wages paid to Mr. Smajlovic from USPS.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Mr. Smajlovic's appeal was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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 Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Mr. Smajlovic received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Smajlovic called IWD and the representative told him that he did not need to take any action. When Mr. Smajlovic learned that he was denied benefits based on a voluntary quit from Von Maur Inc, he filed an appeal. Since Mr. Smajlovic's delay was due to an error or misinformation from the Department, his appeal is considered to have been filed on time.

The administrative law judge further concludes that Mr. Smajlovic is not eligible to receive REGULAR unemployment insurance benefits during the subsequent benefit year.

Iowa Code section 96.4(4)(a) and (c) provide:

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.*

[Emphasis added.]

Iowa Code Section 96.1A(14), (16) and (26) provides

14. "Employer" means:

a. For purposes of this chapter with respect to any calendar year after December 31, 2018, any employing unit which in any calendar quarter in either the current or preceding calendar year paid wages for service in employment.

...

16. "Employment".

a. Except as otherwise provided in this subsection, "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied.

...

26. "Insured work" means employment for employers.

Qualifying wages are those subject to contribution under a state employment security law or wages subject to tax under the federal Unemployment Tax Act. See Iowa Admin. Code r. 871-24.1(131), (132).

Mr. Smajlovic has not met the eight-times-weekly-benefit-amount minimum earnings requirement and, therefore, is not eligible for benefits in connection with the second benefit year that was effective May 31, 2021. Mr. Smajlovic established a claim in an earlier benefit year and received benefits in connection with that claim. In order to meet the eight-times-weekly-benefit-amount minimum earnings requirement, Mr. Smajlovic would need to have been employed and to have been paid eight times her \$481.00 weekly benefit amount subsequent to separating from employment with Von Maur Inc in August 2020. That amount would be \$3,848.00. Because IWD has no record of Mr. Smajlovic having received at least \$3,848.00 in wages from insured work during the relevant period, he is not eligible for benefits in connection with the second benefit year that was effective March 20, 2021.

DECISION:

Mr. Smajlovic's appeal was filed on time. The April 5, 2021, (reference 01) decision is affirmed. Mr. Smajlovic did not meet the eight-times-weekly-benefit-amount minimum earnings requirement to be monetarily eligible for benefits in connection with a second benefit year. Mr. Smajlovic is not eligible for benefits in connection with the benefit year that started on March 20, 2021.

REMAND:

The issue of whether Mr. Smajlovic was paid insured wages from the United States Postal Service in the third and fourth quarters of 2020 is remanded to the Tax Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge

Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 31, 2021
Decision Dated and Mailed

dz/ol

NOTE TO MR. SMAJLOVI:

- Your current benefit year ends on March 20, 2022.
- **If you earn at least \$3,868.00 between now and the end of your current benefit year, let Iowa Workforce Development (IWD) know since you may become eligible for REGULR UI benefits.**
- You can let IWD know by emailing uicclaimshelp@iwd.iowa.gov Include the following information in your email:
 - Your name,
 - Your address,
 - The last four numbers of your Social Security number, and
 - Evidence (a picture or an attachment) of your earnings.