

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA K ASH

Claimant

APPEAL NO. 13A-UI-08108-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COMMUNITY SCHOOL DIST

Employer

OC: 06/09/13

Claimant: Appellant (2)

Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

LaToya Ash filed a timely appeal from the June 24, 2013, reference 01, decision that allowed benefits based on wage credits earned from non-educational base period employers, but that denied benefits based on base period wage credits from Iowa City Committee School District pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on August 15, 2013. Claimant, Ms. Ash, participated and extended additional testimony through Jannie Ash. At the time of the hearing, employer representative Lindsey Detra was not available at the number the employer had provided for the hearing. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of Ms. Ash's base wages.

ISSUES:

Whether Ms. Ash's appeal was timely. It was.

Whether Ms. Ash is disqualified for unemployment insurance benefits based on the between academic terms disqualification set forth at Iowa Code section 96.4(5).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 24, 2013, Workforce Development mailed a copy of the June 24, 2013, reference 01, decision to LaToya Ash's last-known address of record. The decision allowed benefits based on wage credits earned from non-educational base period employers, but denied benefits based on base period wage credits from Iowa City Committee School District pursuant to the between academic terms disqualification set forth at Iowa Code section 96.4(5). Ms. Ash learned about the decision by telephone before she received the actual decision. On June 25, 2013 Ms. Ash completed an appeal form and delivered it to the Iowa City Workforce Development Center. The June 24 decision contained a July 4, 2013 deadline for appeal.

On or about July 10, 2013, Ms. Ash learned that the Iowa City Workforce Development Center staff had faxed her appeal form to a number other than the fax number for the Appeals Section. Ms. Ash had included her telephone number on the appeal form and the party who erroneously received the appeal by fax contacted Ms. Ash to let her know the appeal had been faxed to the wrong number. Ms. Ash immediately contacted the Iowa City Workforce Developer Center and was directed to bring her appeal form back to the Center. On July 10, Ms. Ash returned to the Iowa City Workforce Development Center and resubmitted her appeal form. On that same day, the Iowa City Workforce Development Center faxed the appeal form to the Appeals Section and the Appeals Section received the appeal form.

Ms. Ash began her part-time employment with the Iowa City Community School District in August 2010 and worked as a food service worker, 10 hours per week, at Horn Elementary. Ms. Ash's mother also worked for the school district. Ms. Ash last performed work for the school district on December 8, 2012. In December 2012, the employer approved a leave of absence so that Ms. Ash could help care for her mother as her mother recovered from knee surgery and so that Ms. Ash could attend classes. The employer approved a leave of absence through the spring semester of 2013. As part of the approval letter, the employer told Ms. Ash that she would be expected to return to her food service duties at the start of the Fall 2013 semester.

At the end of May 2013, Ms. Ash received a letter from the Iowa City Community School District in which the district advised it would not be renewing Ms. Ash's contract for the 2013-2014 school year and that Ms. Ash's effective last day of employment would be June 5, 2013. In other words, the employer deemed the employment ended as of the end of the 2012-2013 academic year. Ms. Ash established a claim for unemployment insurance benefits that was effective June 9, 2103, after she had received the letter that indicated the Iowa City Community School District would not have employment for her at the end of the traditional summer break.

REASONING AND CONCLUSIONS OF LAW:

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). 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 evidence establishes that Ms. Ash hand-delivered her appeal to the Iowa City Workforce Development Center on June 25, 2013, well before the July 4, 2013 appeal deadline. At the time, Ms. Ash delivered her appeal, the Iowa City Workforce Development Center acted as an agent of the Appeals Section for purposes of forwarding the appeal to the Appeals Section. The evidence establishes that the appeal was filed on June 25, 2013, at the time Ms. Ash delivered her appeal to the local office. Any misdirection of the appeal or further delay beyond that date was attributable to Workforce Development. The appeal was timely and the administrative law judge has jurisdiction to enter a ruling based on the merits of the appeal.

The between academic terms disqualification set forth at Iowa Code section 96.4(5) provides as follows:

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

5 .Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution *in any capacity* under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

871 IAC 24.51(6) defines "reasonable assurance" as follows:

Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

The evidence in the record establishes that Iowa City Community School District is an "educational institution" affected by the between academic terms disqualification provision Iowa Code section 96.4(5)(d). Ms. Ash was a non-professional employee of Iowa City Community School District during the 2012-2013 academic year. As of the end of that school year, and prior to the effective date of her claim for unemployment insurance benefits, Ms. Ash did *not* have reasonable assurance of employment in a similar capacity during the 2013-2014 academic year. Ms. Ash is not disqualified for benefits between academic terms based on the provisions of Iowa Code section 96.4(5)(b). Ms. Ash is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The claims representative's June 24, 2013, reference 01 decision is reversed. The claimant's appeal was timely. The claimant is not disqualified for benefits based on the between academic terms disqualification provisions of Iowa Code section 96.4(5). Effective June 9, 2013, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs