

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEFANI GOODWIN
Claimant

APPEAL 17A-UI-12514-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/23/17
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 22, 2017, (reference 04), unemployment insurance decision that denied benefits based upon claimant's failure to report as directed. After due notice was issued, a telephone conference hearing was scheduled to be held on December 26, 2017. Claimant participated. Department's Exhibit D-1 was received into evidence.

ISSUES:

Is the appeal timely?

Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was able to and available for work during the one week ending November 11, 2017. Claimant mistakenly indicated that she was not able to and available for work when making her continued weekly claim.

A notice was mailed to the claimant to be available for a call from IWD on November 21, 2017, at 10:45 a.m. about her availability for work the week ending November 11, 2017. The claimant did not report because the claimant did not receive the notice. The administrative record also shows an incorrect phone number was used by the fact-finder to contact claimant at the scheduled hearing time.

A disqualifying unemployment insurance decision was mailed to the claimant's last known address of record on November 22, 2017. Claimant was in the process of moving during this period of time, but had her mail forwarded to her new address. Claimant received the decision

on December 4, 2017 and immediately contacted her local office. Claimant was given instructions on how to appeal the decision and filed her appeal on December 6, 2017.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received until December 4, 2017. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal within two days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue that must be decided is whether claimant failed to report as directed. For the reasons that follow, the administrative law judge concludes the underlying issue was the result of a reporting error, and the claimant has established a good cause reason for having failed to report as directed.

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".

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.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or on a selected debit card.

(2) 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.

(3) 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.

Claimant was not available at the time of the scheduled fact-finding interview. Claimant did not appear for the fact-finding interview because she did not receive the interview notice and the telephone number used by the fact-finder was incorrect. Since she did not receive the notice, claimant has established a good cause reason for failing to report as directed.

DECISION:

The November 22, 2017 (reference 03) decision is reversed. The claimant's appeal is timely. The claimant has established a good cause reason for failing to report as directed. The underlying issue was the result of a reporting error. Benefits are allowed effective November 19, 2017, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

nm/rvs