

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE RIVAS
Claimant

APPEAL NO. 14A-UI-11273-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/11/14
Claimant: Appellant (2/R)**

871 IAC 24.2(1)g – Retroactive Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 24, 2014, reference 01, that denied his request for retroactive benefits. A telephone hearing was held on November 19, 2014. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Exhibits A and A-1 were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant entitled to retroactive benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits during the week of May 11, 2014 after his separation from employment from Tyson Fresh Meats. The claimant does not read and write in English and relies on persons who can interpret and translate into Spanish.

During the week of May 11 the claimant reported to the Waterloo Workforce Development office to obtain assistance in filing his claim. There was no Spanish interpreter available in the office. A Spanish-speaking employee who used to work in the unemployment division was asked to assist the claimant with filing the claim, but she said that she was not able to help because she had other work to do.

The claimant went to the Centro Latino office in Waterloo and found someone there to help him file his claim. He was told to wait for a decision or document with a date of a phone interview. He was not told that he needed to file weekly claims. He was not aware of his need to file weekly claims until after he received a decision on his separation from employment from Tyson Fresh Meats granting benefits on September 8. He and a person who acted as his interpreter went into the Waterloo Workforce Development office in September and was informed about the need to file weekly claims. The claimant requested that he receive benefits from the 19 weeks between May 11 and September 23.

During the time period from May 11 to September 23 the claimant was able to work, available for work, and actively contacting at least two employers per week about employment.

An unemployment insurance decision was mailed to the claimant on September 24, 2014. The decision denied his request of retroactive benefits and stated the decision was final unless a written appeal was postmarked or received by the Appeals Bureau by October 4, 2014. The decision was mailed to the wrong address.

The claimant did receive the decision within the ten-day period for appealing the decision. He filed a written appeal on October 31, 2014, shortly after he received the decision.

The claimant has received nine weeks of benefits from the week ending September 27 through the week ending November 22.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

The next question is whether the claimant had a reasonable opportunity to file 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 claimant filed his appeal late because the decision was sent to the wrong address and the claimant was unaware of the decision until after the deadline for appealing expired. The claimant did not have a reasonable opportunity to file a timely appeal and filed the appeal promptly after he learned about the decision.

The next issue in this case is whether the claimant is eligible for unemployment insurance benefits for the weeks before September 21, 2014.

The unemployment insurance rules provide: "No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period." 871 IAC 24.2(1)g.

The claimant has established reasonable cause for his delay in filing his weekly claims. Reasonable cause involves circumstances beyond the claimant's control that prevent a claimant from filing a prompt and proper claim. In this case, the claimant reported to the Workforce Center asking for assistance in filing his claim because of language difficulties. There was no interpreter available and the Spanish-speaking person in the office said she was too busy to help. The claimant was never given instructions on filing weekly claims. Since the claimant has already received nine weeks of benefits, the matter of issuing a special payment to the claimant for 17 retroactive weeks is remanded to the Agency.

The evidence establishes that the claimant was able to and available for work and actively seeking work during the time in question.

DECISION:

The unemployment insurance decision dated September 24, 2014, reference 01, is reversed. The claimant is eligible to receive 17-weeks retroactive benefits. The matter of implementing this decision is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can