

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CALEB A LINDSEY
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 20A-UI-00695-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Caleb Lindsey (claimant) appealed a representative's January 2, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits because he did not have transportation to work with Team Staffing Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2020. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. A message was left for the employer. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant lost his means of transportation, his girlfriend's car, at the end of November 2019. He has been unemployed since November 2019. The claimant believes he will call a cab to drive him to work or his cousin would take him to work. He has been babysitting his nieces and nephews one to five times per week during the day.

A disqualification decision was mailed to the appellant/claimant last known address of record on January 2, 2020. The decision was received by the appellant/claimant on January 24, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 13, 2020. The appeal was filed on January 24, 2020, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

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

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, subsections 10 and 11, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The appellant/claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant/claimant appealed as soon as he heard about the decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work. The administrative law judge concludes he is not.

Iowa Admin. Code r. 871-24.23(4), (7), and (8) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed

not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(7) Where an individual devotes time and effort to becoming self-employed.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant's means of transportation was lost. When a claimant has no reliable means of transportation to employment, the claimant is deemed to not be available for work. The claimant is also caring for children either to help for a family member or to earn extra money. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with another employer.

DECISION:

The January 2, 2020, reference 02, decision is affirmed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn