

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SEAN M COCHRAN
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 21A-UI-00349-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.6 – Profiling for reemployment services
Iowa Admin. Code r. 871-24.2(1)e – Procedures for workers desiring to file a claim for benefits
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 25, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in a reemployment and eligibility assessment. The parties were properly notified of the hearing. A telephone hearing was held on February 5, 2021. The claimant participated personally. Tobin Garrett participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1-4 and Claimant Exhibit A were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Is the appeal timely?
Was the claimant available for work?
Did the claimant fail to report as directed by a department representative or offer justifiable cause for their failure to do so?
Did the claimant fail to participate in a reemployment and eligibility assessment appointment as directed or offer justifiable cause for their failure to do so?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of October 11, 2020.

Claimant became unemployed when he injured his hand. Because he injured his hand, he could not type his own application for unemployment insurance benefits. He relied upon the help of his dad. Unbeknownst to the claimant, two numbers in his address were transposed

when his claim was established. Claimant's address is 22482 US Highway 34. However, his application reflected 22842.

Claimant was selected to participate in a reemployment and eligibility assessment. A notice was mailed to claimant on November 7, 2020 for a November 23, 2020 appointment. (Department Exhibit D-1). Claimant did not get the letter in the mail. The letter was mailed to the incorrect address (which claimant did not realize at the time). Claimant also did not receive the initial decision dated November 25, 2020, which notified him that his benefits had been suspended. Consequently, claimant was unaware he had missed his appointment or that he missed the deadline to appeal the initial decision.

When claimant learned of the missed decision and RESEA appointment, he filed his appeal. The appeal was filed on December 8, 2020 by fax (Claimant Exhibit A).

Since establishing his claim for benefits, claimant was under doctor's care from October 11, 2020 until he was released on December 1, 2020. Claimant was also in the hospital from December 17, 2020 through December 26, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue is to address 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. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, claimant did not receive the initial decision. Claimant did not receive the initial decision due to an inadvertent typographical error. Without notice of a disqualification, no meaningful opportunity for appeal exists. The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(7) provides:

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

7. The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

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 on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.6(1-6) provides:

Reemployment services and eligibility assessment procedure.

(1) The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

(1) Purpose.

a. Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

(3) Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause..

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

b. Reserved.

This rule is intended to implement Iowa Code section 96.4(7).

To maintain continued eligibility, a claimant shall report as directed by an authorized representative. Iowa Admin. Code r. 871-24.2(1)e. A claimant who fails to report as directed by notice mailed to the claimant is deemed unavailable for work. Iowa Admin. Code r. 871-24.23(11).

If the department identifies a claimant who is likely to exhaust benefits, in order to be eligible for weekly benefits a claimant must report as directed to participate in reemployment services. Iowa Code § 96.4(7). Unemployment insurance rules require a claimant to participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Iowa Admin. Code r. 871-24.6(6). Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services. Iowa Admin. Code r. 871-24.6(6). Justifiable cause for failure to participate is defined as “an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.” Iowa Admin. Code r. 871-24.6(6). Failure to report or have justifiable cause for failing to report means the claimant has failed to meet the availability requirements of the law. Iowa Admin. Code r. 871-24.2(1)e and 871-24.23(11).

The claimant must first be notified that an obligation to report for an appointment exists. As such, non-receipt of the notice is justifiable cause for failure to report as directed. The claimant is eligible to receive unemployment insurance benefits effective November 22, 2020, because the claimant did have justifiable cause for failing to report for the reemployment services orientation due to non-receipt of notice. Benefits are allowed, provided claimant is otherwise eligible.

The final issue to address is whether claimant is able to and available for work:

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For the period of October 11, 2020 through December 1, 2020, claimant was under the care of a doctor and had not been released to work. Therefore, he is not eligible for benefits for this period.

For the period of December 17-26, 2020, claimant was hospitalized and therefore, unable to work. Benefits are denied for this period as well.

DECISION:

The November 25, 2020 (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant filed a timely appeal. The claimant has provided justifiable cause for having failed to report for a reemployment services appointment and notified IWD of the reason prior to the appointment or was unable to notify IWD of the justifiable cause reason for failing to report due to lack of notice. Benefits are allowed effective November 22, 2020, provided claimant is otherwise eligible.

However, claimant was not able and available for work October 11, 2020 through December 1, 2020 and December 17, 2020 through December 26, 2020 due to illness or injury. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 26, 2021
Decision Dated and Mailed

jlb/kmj

Note to Claimant

This decision has determined that you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law for all weeks you have made weekly continued claims. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

You may find information about food, housing, and other resources at
<https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at
<https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>