

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN L BAKER
Claimant

APPEAL 20A-UI-05603-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

**OC: 02/16/20
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 16, 2020 (reference 04) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to him working the same hours and same wages. The parties were properly notified of the hearing. A telephone hearing was held on July 13, 2020. The claimant, John L. Baker, participated personally. The employer, Kinseth Hotel Corporation, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant's appeal considered timely?
Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on March 16, 2020. The claimant does not remember whether he received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 26, 2020. The claimant filed an appeal to the Appeals Bureau on March 26, 2020. Claimant telephoned Iowa Workforce Development over 50 times and was unable to reach anyone to help him with his appeal. He does not have access to the internet and his local library was closed due to the COVID 19 pandemic. He attempted to go to his local Iowa Workforce Development office but was unable to be helped at that time and was just given a telephone number to call customer service. Claimant filed an appeal at his local office on June 9, 2020.

Claimant started working for this employer in August or September of 2019. He worked initially as a full-time employee and then was switched by the employer to a part-time employee. The claimant's schedule would vary each week and he would contact the employer to see if they needed him to work additional hours. He is still employed to date. Claimant was never guaranteed a certain number of hours each week as a part-time employee; however, when he was initially hired he was working 40 hours per week as a full-time employee.

At the beginning of March, 2020, the claimant's supervisor told him that they did not want him working at this time due to the COVID 19 pandemic. The hotel was trying to limit the workers at that time and they believed there was an outbreak at the location. Claimant's supervisor has not contacted him to come back to work yet, but he has not permanently separated from employment. Claimant earned wages of \$300.00 for the week-ending February 22, 2020; claimant earned wages of \$350.00 for the week-ending February 29, 2020; claimant earned wages of \$150.00 for the week-ending March 7, 2020; and claimant earned wages of \$200 for the week-ending March 14, 2020. He has not worked since the week-ending March 14, 2020. Claimant's weekly-benefit amount is \$208.00.

The issue of whether the employer's account may be charged for benefits paid due to the fact that the claimant is not working because of the COVID 19 pandemic has yet to be investigated by the Benefits Bureau of Iowa Workforce Development. That issue will be remanded for an investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant filed a timely appeal. The administrative law judge concludes the appeal shall be deemed timely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 issued 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. Bd. 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 issuing 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).

However, in this case, the claimant's delay in submission was due to the fact that he did not receive the decision in the mail and that he could not reach an Iowa Workforce Development representative by phone or in person. The fact that the local library was closed due to the COVID 19 pandemic also limited the claimant's ability to access the internet.

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.

As such, claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to division error pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal shall be considered timely.

The next issue is whether the claimant is totally, partially or temporarily unemployed.

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the

employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this case, the claimant's **original** contract of hire was as a full-time employee. He was working and earning wages for the first four weeks following his original claim date. He earned wages in excess of his weekly-benefit amount, plus \$15.00 for the week-ending February 22, 2020 and February 29, 2020. For the week-ending March 7, 2020 and March 14, 2020, he did not earn wages in excess of his weekly-benefit amount. As such, the claimant is not considered to be partially unemployed for the week-ending February 22, 2020 or February 29, 2020. Benefits are denied for those two weeks.

For the week-ending March 7, 2020 and March 14, 2020, claimant is considered partially unemployed and is eligible for benefits, less any deduction for wages earned. For the week beginning March 15, 2020 through July 11, 2020, claimant has not earned any wages and is totally unemployed. Benefits are allowed effective March 1, 2020, provided the claimant remains otherwise eligible.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits for the week-ending February 22, 2020 and February 29, 2020, he may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

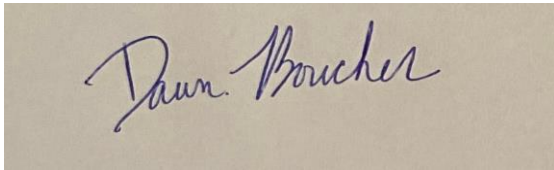
Note to Claimant: If this decision determines you are not eligible for regular State of Iowa unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant's appeal shall be considered timely. The March 16, 2020 (reference 04) decision is modified in favor of the appellant. The claimant has been partially unemployed and totally unemployed during the weeks in which he has filed his weekly-continued claims. Benefits are allowed effective March 1, 2020, provided the claimant is otherwise eligible.

REMAND:

The chargeability issue delineated in the findings of fact of whether the employer's account may be charged for benefits paid due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of allocation of charges.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

July 22, 2020
Decision Dated and Mailed

db/sam