

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYNE CULP
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-21219-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21
Claimant: Appellant (2)

Iowa Admin. Code r. 871-24.28(6) – Prior Adjudication
Iowa Admin. Code r. 871-24.19(1) – Prior Adjudication

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 10, 2021, (reference 04) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2021. Claimant participated and testified. Employer participated through Brittany Malone. The employer was represented by Barbara Buss. Exhibit D-1 and D-2 were received into the record. Official notice was taken of the administrative records.

ISSUES:

Whether the separation was adjudicated in a prior claim year?

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider her appeal otherwise timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision at issue has been adjudicated in a prior claim year and that decision has become final, but the claimant appealed that decision prior to it becoming final. That decision has been reversed in 21A-21215-SN-T.

A disqualification decision was mailed to the claimant's address of record on June 9, 2021. The claimant did not receive the decision. The first notice of disqualification was the overpayment decision of September 15, 2021. (Exhibits D-1) The appeal was on September 17, 2021 within the appeal period listed on the overpayment decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the 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 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 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 claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the separation at issue has been adjudicated in a prior claim, but the claimant appealed that decision prior to it becoming final. That decision has been reversed in 21A-21215-SN-T.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

Iowa Admin. Code r. 871-24.19(1) provides:

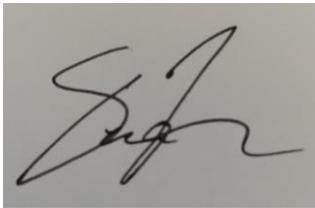
Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with

the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

The issue presented was resolved in a prior claim year (original claim date November 10, 2019) as the representative's decision dated June 9, 2021, reference 05. The current decision, referring to the prior claim year decision on the same separation date has been reversed on appeal in 21A-21215-SN-T.

DECISION:

The June 10, 2021, (reference 04), decision is reversed. The prior decision on the separation has been reversed on appeal in 21A-21215-SN-T.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

January 4, 2022
Decision Dated and Mailed

smn/mh