

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES H DAW
Claimant

APPEAL 17A-UI-12320-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/08/17
Claimant: Appellant (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available
871 IAC 24.2(1)e – Failure to Report

STATEMENT OF THE CASE:

Claimant filed an appeal from the October, 25, 2017, (reference 01) decision that denied benefits finding the claimant had failed to report as directed. After due notice was issued, a hearing was held by telephone conference call on December 20, 2017. Claimant participated. Claimant's Exhibit A was received. Official notice was taken of agency records.

ISSUE:

Did the claimant file a timely appeal?
Did the claimant fail to report as directed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant did receive the notice informing him he had a fact-finding interview on October 24. He did not answer the telephone that day because his cellular telephone was broken. The claimant mistakenly assumed that he had until November 6 to submit his information in writing and that the agency wanted to talk to him about his most recent separation from employment. The agency wanted to talk to the claimant about his report that he was receiving a pension.

The claimant is receiving a military pension from his time in the service. His military service ended in 2006 and thus his military pension is not deductible from his unemployment insurance benefits as the military would not be one of his base period employers.

However, at the hearing, the claimant indicated he does a 401K plan from his last employer, Burrows Paper Corporation. Burrows made contributions to the claimant's 401K. Whether the 401K is deductible from claimant's unemployment insurance benefits has yet to be decided by the unemployment insurance service bureau of Iowa Workforce Development.

When the claimant received the decision at issue in this case he went to his local office and provided information to his local office about his military pension. He failed to disclose his 401K

from Burrows. The local office employee he spoke to did not tell the claimant that he would need to appeal the decision at issue in this case in order to resolve the issue. The claimant went to his local office on November 2, 2017, within the time period he was allowed to file an appeal.

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 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 claimant went to his local office to resolve this ineligibility decision. He was led to believe by the local office employee that he would not need to file an appeal to the decision to resolve the issues. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Under those specific circumstances, the administrative law judge concludes the claimant does have good cause for filing a late appeal. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant has established a good cause reason for having failed to report as directed.

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", unnumbered paragraph (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 Admin. Code r. 871-24.2(1)e provides:

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

(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 in the individual's account at a financial institution or on a selected debit card.

(2) In order for an individual to receive payment by direct deposit, the individual must provide the financial institution selected by the department with the appropriate bank routing code number and a checking or savings account number.

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

Iowa Admin. Code r. 871-24.23(11) provides:

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

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

The claimant's telephone was broken and he had no way to participate in the fact-finding interview telephone call. That is good cause for claimant's failure to report. Since claimant has established a good cause reason for failing to report as directed, benefits are allowed, **provided the claimant is otherwise eligible.**

The claimant's military pension is not deductible from his unemployment insurance benefits as the military is not one of his base period employers. The same cannot be said for his 401K from Burrows Paper Corporation.

REMAND:

The issue of whether the claimant is receiving a deductible pension from Burrows Paper Corporation is remanded to the claims section for an initial review and determination. The fact-finding interview shall give the claimant and the former employer, Burrows Paper Corporation, notice and opportunity to participate.

DECISION:

The October 25, 2017, (reference 01) decision is reversed. The claimant filed a timely appeal. The claimant has established a good cause reason for failing to report as directed. Benefits are allowed effective October 22, 2017, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/scn