

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICK L CASHMAN
Claimant

APPEAL 18A-UI-01149-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/17/17
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
871 IAC 24.2(1)e – Failure to Report

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 31, 2017 (reference 04) 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 February 23, 2018. Claimant participated. Claimant's Exhibit A was received.

ISSUE:

Did claimant file a timely appeal?

Should the representative's reference 04 decision be reversed so as to be consistent with subsequent agency action taken in reference 06?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 31, 2017 an agency representative issued a decision denying benefits for the claimant effective October 8, 2017 (see reference 04). On November 2, 2017 another agency representative issued a decision finding the claimant overpaid unemployment insurance benefits in the amount of \$910.00 based upon the ineligible decision issued October 31, 2017 (see reference 05). On November 3, 2017 the same agency representative who issued reference 04 denying benefits, issued a new decision allowing benefits effective October 8, 2017 (see reference 06). No one from the agency ever corrected the overpayment decision that had been issued on November 2, 2017, even though the agency had determined that the claimant was eligible for benefits effective October 8, 2017.

The claimant did not receive the denial or overpayment decisions until well after his time to appeal had expired. The claimant promptly filed appeals as soon as he learned of the issues.

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 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). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the representative's decision should be reversed.

Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

Since the reference 04 decision appealed has been amended in favor of the appellant by the reference 06 decision, the original representative's decision bearing reference 04 is reversed.

DECISION:

The October 31, 2017, (reference 04) unemployment insurance decision is reversed. The claimant filed a timely appeal. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs