

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNOR J KOTH
Claimant

BULL MOOSE HEAVY HAUL INC
Employer

APPEAL 21A-UI-12593-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2020 (reference 01) unemployment insurance decision that denied regular unemployment insurance benefits funded by the State of Iowa to the claimant effective April 5, 2020 based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on July 30, 2021 following due notice. Claimant participated personally. The employer participated through witness Eric Branson. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-12594-DB-T.

ISSUES:

Was the appeal timely?
Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated August 28, 2020 (reference 01) that found the claimant was not eligible for regular unemployment insurance benefits funded by the State of Iowa effective April 5, 2020 due to a voluntary leave of absence from work was mailed to the claimant's address of record and claimant received it. Claimant contacted Iowa Workforce Development (IWD) by telephone and was instructed not to file an appeal but to file an application for Pandemic Unemployment Assistance (PUA) benefits instead, which he did. Claimant was approved for PUA benefits effective April 5, 2020 through May 2, 2020. His established weekly benefit amount for regular unemployment insurance benefits was the same as his weekly benefit amount for PUA benefits. However, claimant's administrative records establish that he was never paid any PUA benefits for the weeks of April 5, 2020 through May 2, 2020.

On May 11, 2021 another decision that found claimant was overpaid regular unemployment insurance benefits was issued to the claimant, which he received in the mail. He filed an appeal

on May 20, 2021. His appeal to this decision dated August 28, 2020 (reference 01) was docketed at that time.

Claimant began working for this employer as a full-time welder beginning on October 8, 2018. Claimant's wife had underlying medical conditions that made her more susceptible to serious complications should she contract COVID-19. See Exhibit A. Claimant was off of work to quarantine based upon a medical provider's recommendation that he do so. He was off of work from April 5, 2020 through May 2, 2020. He properly reported his earned wages for the week-ending April 11, 2020 when he filed his weekly-continued claim for benefits. Claimant returned to work after May 2, 2020. From June 28, 2020 through July 4, 2020, claimant was on a temporary layoff from work due to lack of production. Claimant returned to work after the one-week layoff. Claimant filed a weekly-continued claim for benefits for the week-ending July 4, 2020; however, he was not paid regular unemployment insurance benefits due to this underlying disqualification decision. Claimant earned no wages during the one-week layoff for the week-ending July 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Bd. of Adjustment*,

239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). 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).

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.

In this case, the claimant was instructed by an IWD representative to not file an appeal to the decision and to file for PUA benefits instead. The delay in claimant filing an appeal was due to division error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2) and as such, the appeal shall be considered timely. The next issue is whether the claimant was eligible for regular unemployment insurance benefits effective April 5, 2020.

Iowa Code section 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 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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute in order to be eligible for regular unemployment insurance benefits funded by the State of Iowa. Iowa Code § 96.6(2). The claimant was not working from April 5, 2020 through May 2, 2020 because he was quarantining based upon a medical practitioner's recommendations. As such, he is not eligible for **regular unemployment insurance benefits funded by the State of Iowa** during that period of time. Claimant's administrative records establish that he was already approved for PUA benefits from April 5, 2020 through May 2, 2020. Claimant was also eligible for Federal Pandemic Unemployment Compensation (FPUC) benefits from April 5, 2020 through May 2, 2020 based on his PUA eligibility.

For the one-week ending July 4, 2020, the claimant was laid off due to lack of work. The cause of his unemployment during that one-week period was due to the employer, and not a medical practitioner instructing him to quarantine.

Iowa Code section 96.19(38) provides:

"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.

Because he was off of work due to a layoff, regular unemployment insurance benefits funded by the State of Iowa are allowed for that one-week period ending July 4, 2020, provided the claimant was otherwise eligible.

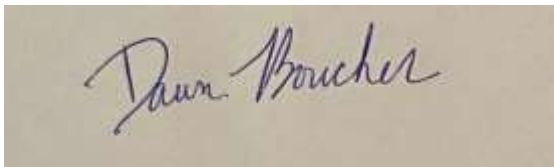
DECISION:

The appeal shall be considered timely. The August 28, 2020 (reference 01) unemployment insurance decision is modified in favor of the claimant. The claimant was not able to and available for work due to him quarantining from April 5, 2020 through May 2, 2020 and unemployment insurance benefits funded by the State of Iowa are denied from April 5, 2020 through May 2, 2020. This decision does not affect the claimant's eligibility for PUA benefits for the same period of time beginning April 5, 2020 and ending May 2, 2020.

The claimant was laid off due to lack of work for the one-week period ending July 4, 2020. As such, regular unemployment insurance benefits funded by the State of Iowa are allowed for that one-week period ending July 4, 2020. Claimant would also be eligible for FPUC benefits for the week-ending July 4, 2020 based upon his eligibility for regular unemployment insurance benefits funded by the State of Iowa.

REMAND:

This matter is remanded to the Benefits Bureau for payment of claimant's PUA benefits that he was found eligible for beginning April 5, 2020 and ending May 2, 2020; as well as corresponding FPUC payments for the weeks between April 5, 2020 and May 2, 2020 that the claimant was eligible for based upon his PUA benefit allowance. The matter is also remanded for payment of regular unemployment insurance benefits for the week-ending July 4, 2020 and corresponding FPUC benefits for the week-ending July 4, 2020 based upon his eligibility for regular State of Iowa funded benefits for that one-week period.



Dawn Boucher
Administrative Law Judge

August 04, 2021
Decision Dated and Mailed

db/ol