

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANATOLI M FRISHMAN
Claimant

IOWA STATE UNIVERSITY
Employer

APPEAL 21R-UI-07446-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Anatoli Frishman (claimant) appealed an Iowa Workforce Development June 25, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Iowa State University (employer). Administrative Law Judge Christine Louis issued a decision on January 28, 2021, affirming the representative's decision. The Employment Appeal Board issued a decision of remand on March 12, 2021. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2021. The claimant participated personally. The employer Heather Smith, Attorney at Law, and participated by Christy Kadner, Human Resources Coordinator.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 21A-UI-07446.S1, 21A-UI-07447.S1, and 21A-UI-7448.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was between successive terms with an educational institution and had reasonable assurance of employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is an educational institution. The claimant was hired on January 4, 1994, as a lecturer with a nine month contract. The claimant signed a letter of intent to return to work with employer each year.

Due to the needs of the department, employees were sometimes asked to work in the summer. This work was not guaranteed. The claimant had previously been asked to work on special projects during the summer. The department did not have special projects during the summer of 2020. The claimant stopped working for the employer in May 2020, and filed for

unemployment insurance benefits with an effective date of May 17, 2020. The claimant returned to work August 2020.

A disqualification decision was mailed to the parties' last known address of record on June 25, 2020. The claimant did not receive the decision within ten days. He received it in the fall of 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 6, 2020. The appeal was filed on November 4, 2020, which is after the date noticed on the decision.

REASONING AND CONCLUSIONS OF LAW:

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 was unable to identify when he received the decision but knew it was the fall of 2020. He 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 claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.4(5)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.22(2)i(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

Iowa Admin. Code r. 871-24.52(9) provides in part:

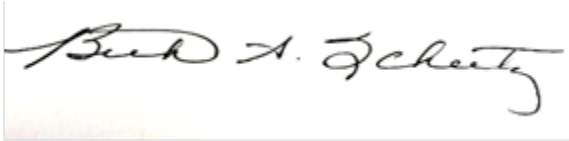
(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

The claimant is employed by an educational institution. He worked the 2019-2020 school year and was expected to work for the 2020-2021, school year. The two years were successive terms. The claimant filed for unemployment insurance benefits with an effective date of May 17,

2020. He filed for unemployment insurance benefits between successive terms with an educational institution when he had a reasonable assurance of employment in the next semester. Benefits are denied.

DECISION:

The June 25, 2020, reference 01, decision is affirmed. The appeal in this case was timely. The claimant is not eligible to receive unemployment insurance benefits for the weeks between successive terms with the employer. Benefits are denied as of May 17, 2020.

A handwritten signature in black ink, reading "Beth A. Scheetz", is written over a horizontal line.

Beth A. Scheetz
Administrative Law Judge

June 2, 2021
Decision Dated and Mailed

bas/kmj