

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEVEN L GORDON
Claimant

APPEAL NO. 12A-UI-05918-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/29/12
Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.38(1)c – Combined Wage Claim
Iowa Admin. Code r. 871-24.37(1)d(2) – Payment of Benefits to Interstate Claimants
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 19, 2012 (reference 01) decision that found the decision on the January 29, 2012 separation was made in an Illinois claim. After due notice was issued, a hearing was held by telephone conference call on June 15, 2012. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate. Department's Exhibit D-1 was admitted to the record.

ISSUES:

Was the claimant's appeal was timely?

Whether the separation was adjudicated in a prior claim year by Illinois?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on April 19, 2012. He did not receive the decision prior to the appeal deadline because the postal service forwarded his mail to his brother's new address. The appeal was sent immediately upon notice of that decision.

The decision at issue has been adjudicated in a prior claim year by Illinois and that decision dated February 17, 2012 has become final.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether 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, subsection 10, 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 administrative law judge concludes that the failure to file an appeal within the time prescribed by the Iowa Employment Security Law was due to delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Thus, the appeal is accepted as timely.

For the reasons that follow, the administrative law judge concludes the separation at issue has been adjudicated in a prior claim year by Illinois and that decision has become final.

Iowa Admin. Code r. 871-24.38(1)c provides:

Combined wage claim.

24.38(1) *Purpose of plan.* The combined wage program is to enable an unemployed worker with covered employment or wages in more than one state to combine all such employment and wages in one state in order to qualify for benefits or to receive increased benefits.

c. The rights of the individual under the combined wage claim plan shall be determined by the paying state after the combining of all wages available from the transferring states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa

requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

Iowa Admin. Code r. 871-24.37(1)d(2), provides:

Payment of benefits to interstate claimants

24.37(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

d. Benefit rights of interstate claimants.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria.

The issue presented was resolved in a prior claim year by Illinois in a decision dated February 17, 2012. The current decision, referring to the prior claim year Illinois decision for the same separation date, is affirmed.

DECISION:

The April 19, 2012 (reference 01) decision is affirmed. The claimant's appeal is timely. The prior Illinois decision on the separation remains in effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw