

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT H SCHNEIDER
Claimant

MAHARISHI UNIVERSITY OF MANAGEMEN
Employer

APPEAL 20A-UI-04434-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 11, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was working the same hours and wages as his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2020. The claimant, Robert H. Schneider, participated personally. The employer, Maharishi University of Management, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the appeal timely?
Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?
Is the claimant overpaid benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision was issued on May 11, 2020 which found that the claimant was not eligible for unemployment insurance benefits due to him working the same hours and same wages with this employer. An appeal deadline of May 21, 2020 was listed on the decision. Claimant received the decision in the mail. Claimant filed an appeal to the decision by email to the Appeals Bureau on May 22, 2020. Claimant tried to contact Iowa Workforce Development by telephone and was unable to get in contact with anyone. Claimant had previously communicated with

Iowa Workforce Development claims help email inbox about his claim on May 12, 2020; May 15, 2020; and May 21, 2020 in order to determine why his claim was locked.

Claimant started working for this employer July 1, 1984. He is still employed to date. He works full-time as a professor and Dean. He normally works 30-40 hours per week but was not required to work certain times of the day.

Besides this full-time teaching position, the claimant also works at Ideal Health Corporation as a medical director for the medical spa on a part-time basis. The spa where he was currently working part-time closed due to the COVID 19 pandemic.

He filed his unemployment insurance claim for benefits effective March 29, 2020 when he was not working his part-time position. Claimant initially failed to report the gross wages earned each week from his full-time teaching position with this employer while filing his weekly-continued claims for benefits. He reported earning \$0.00 in wages from March 29, 2020 through May 9, 2020. Claimant earns \$2,990.00 per month for his full-time teaching position. Claimant's unemployment insurance benefits weekly-benefit amount is \$481.00. Claimant reported earning wages of \$748.00 for the week-ending May 16, 2020. Claimant reported earning wages of \$700.00 for the week-ending May 23, 2020. Claimant reported earning wages of \$375.00 for the week-ending May 30, 2020. Claimant reported earning wages of \$375.00 for the week-ending June 6, 2020. Claimant reported earning wages of \$375.00 for the week-ending June 13, 2020.

Claimant was informed by this employer that they were going to participate in the Voluntary Shared Work program with Iowa Workforce Development. Claimant's hours and wages were cut by 50%. This is the reason claimant reported less wages earned for the week-ending May 30, 2020; June 6, 2020 and June 13, 2020 when he filed his weekly-continued claims for benefits.

Claimant's administrative records establish that he has received \$2,405.00 in unemployment insurance benefits since filing his initial claim for benefits effective March 29, 2020 through the week-ending May 2, 2020. Claimant has also received \$3,000.00 in Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

(emphasis added).

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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, the claimant sent an email to Iowa Workforce Development regarding his denial of benefits prior to the appeal deadline. Due to agency error or misinformation, the appeal was not docketed until May 22, 2020. As such, his appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2) and Iowa Code § 96.6(2). The next issue is whether the claimant is totally, partially, or temporarily unemployed.

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", 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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The claimant has worked and performed services for each week since he has filed his original claim for unemployment insurance benefits. As such, he is neither totally unemployed, nor temporarily unemployed.

The claimant was working full-time and earning his full-time wages for each week that he was filing his weekly-continued claims for benefits from March 29, 2020 through May 23, 2020. Because the claimant was not working less than the regular full-time week and earning less than his weekly benefit amount, plus fifteen dollars, he cannot be considered partially unemployed during that time period. See Iowa Code § 96.19(38)b.

As such, benefits are denied effective March 29, 2020 through the week-ending May 23, 2020, which was the date he last reported earning full-time wages. Because benefits are denied for that period of time, the issues of overpayment of regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid unemployment insurance benefits of \$2,405.00 from March 29, 2020 through May 2, 2020 and must repay the agency those benefits.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that he is and that those must be repaid to the agency as well.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as “Federal Pandemic Unemployment Compensation”).

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular benefits claimant received, the claimant also received an additional \$3,000.00 in Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through May 2, 2020. Claimant is overpaid and required to repay those benefits as well.

Beginning May 24, 2020, claimant reported earning half of his normal weekly-salary due to his employer’s participation in the Voluntary Shared Work program and his full-time hours and wages being cut by 50%. As such, he may be eligible for benefits during the period of time in which he is working less than his normal full-time week and earning less than his weekly-benefit amount, plus fifteen dollars. Benefits are allowed effective May 24, 2020, provided the claimant is otherwise eligible. The claimant must report gross wages earned each week he files weekly-continued claims for benefits.

***Note to Claimant:* While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, he may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”). The Pandemic Unemployment Assistance (“PUA”) section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.**

If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.**

Additional information on how to apply for PUA can be found at:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant's appeal shall be considered timely. The May 11, 2020 (reference 01) decision is modified in favor of the claimant. Benefits are denied effective March 29, 2020 through May 23, 2020 as the claimant earned wages from his full-time employment in excess of his weekly-benefit amount, plus fifteen dollars and was therefore not partially unemployed. Benefits are allowed effective May 24, 2020, provided the claimant is otherwise eligible. The claimant must report all gross wages earned each week he is filing weekly claims for benefits.

The claimant has been overpaid regular unemployment insurance benefits of \$2,405.00 for the weeks between March 29, 2020 and May 2, 2020 and is obligated to repay the agency those benefits.

The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$3,000.00 in Federal Pandemic Unemployment Compensation benefits between March 29, 2020 and May 2, 2020 and is obligated to repay the agency those benefits as well.

Dawn Boucher
Administrative Law Judge

June 29, 2020
Decision Dated and Mailed

db/scn