

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCIS E WANKEN
Claimant

APPEAL NO. 12A-UI-00890-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TLH CLEANING LLC
Employer

OC: 12/04/11
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 4, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 20, 2012. Claimant participated with his wife, Judy Wanken. Employer participated through Company President Ted Hammes. Department's Exhibit D-1 was admitted to the record.

ISSUES:

Is claimant's appeal timely and is he able to and available for work effective December 4, 2011?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant did not receive the decision until January 17, 2012 and filed his appeal on January 24, 2012. By agreement with the employer, he is and has been employed from May 1 through November 30 and does not work winters from December 1 through April 30 since 2008. He is medically unable to work winter months in 2011/12 due to pneumonia. (Department's Exhibit D-1, page 3)

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 § 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 claimant did not have an opportunity to appeal the fact-finder's decision by the deadline, because the decision was not received in a timely fashion. Without timely 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). He filed the appeal within eight days of receipt. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant is able to and available for work. The administrative law judge concludes that he is not.

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", unnumbered paragraph 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".

871 IAC 24.23(10) provides:

(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.

Since claimant requested the winter leaves of absence, he is not considered available for work. This winter, he is also medically unable to work in the job, which requires outdoors work. If

claimant returns to offer his services on May 1 and no work is available, he may reapply for benefits at that time.

During the hearing, the ALJ gave Mrs. Wanken various telephone numbers for possible legal and financial assistance. They are repeated here.

<http://65.166.193.134/IFTWSQL4prod/iowa/public.aspx>

211 Iowa hotline

The site is under construction, so it is fairly basic, but it is a clearinghouse resource through United Way

<http://www.iowamortgagehelp.com/>

877-622-4866

Through the Iowa AG

<http://www.iowalegalaid.org/hotline/>

1-800-992-8161

For Iowans aged 60+

The employer has also offered to assist with making those contacts. Mr. Hammes' number is 515-291-2660.

DECISION:

The January 4, 2012 (reference 01) decision is affirmed. The claimant's appeal is timely. He is not able to or available for work from December 4, 2011 through April 30, 2012. Benefits must be denied for that period.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw