

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS J CONRAD
Claimant

APPEAL 18A-UI-04120-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/10/17
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available –
Iowa Admin. Code r. 871 IAC 24.2(1)e – Failure to Report

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 21, 2018, (reference 01) decision that denied benefits finding the claimant had failed to report as directed. After due notice was issued, a hearing was held by telephone conference call on April 25, 2018. Claimant participated.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant fail to report as directed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for Peterson Contractors. He was regularly laid off due to lack of work in the winter season every year around December 1. At that time he would move to his second home in Arizona. He was bored while in Arizona and took a short term temporary job with Rango. (That separation has been dealt with in a decision issued on April 14, 2018, reference 02, which allowed benefits) Agency records indicate the claimant was properly reporting his wages while he worked for Rango.

When making his weekly claim for benefits for the week ending February 3, 2018 the claimant reported that his job with Rango had ended by indicating he quit. That triggered the agency to schedule him for a fact-finding interview. A notice of fact-finding interview was mailed to the claimant on February 12 for an interview to be held on February 20. The claimant missed the fact-finding interview because he was on vacation and did not receive the notice in time to participate in the interview. When he returned from vacation he found the fact-finding interview notice and called the fact-finder and left messages indicating what had occurred. It is not clear if the claimant ever received the decision issued by the fact-finder as he did not realize his claim was locked until he went to his local office on April 3. When the claimant returned to Iowa in April 2018 he went to his local office and learned that his claim was locked as he had not

appealed the fact-finder's decision denying benefits because he had failed to report as directed. He filed his appeal on April 3 when he learned of the decision locking his claim.

The claimant returned from his layoff with Peterson Contractors on April 23, 2018 and is now working. He is seeking benefits for the three week period ending April 21, 2018.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the 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, 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.

There is no clear evidence that the claimant ever received the decision denying benefits. The claimant 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). When the claimant returned from his layoff he only learned his claim was locked by the decision when he went to his local office on April 3, 2018. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant has established a good cause reason for having failed to report as directed.

Iowa Admin. Code r. 871-24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

Iowa Admin. Code r. 871-24.6(1-6) provides:

Profiling for reemployment services.

(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history, and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant

to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

b. Reserved.

This rule is intended to implement Iowa Code section 96.4(7).

The claimant did not receive the notice of the fact-finding interview in time to participate in the actual interview. The underlying issue has been resolved by a decision issued on April 14, 2018 in reference 02. Benefits are allowed, provide the claimant is otherwise eligible.

DECISION:

The February 21, 2018, (reference 01), decision is reversed. The claimant has filed a timely appeal. The claimant has not failed to report as directed. Benefits are allowed effective February 18, 2018, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs