

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN M KROTZ
Claimant

CNH AMERICA LLC
Employer

APPEAL 21A-UI-05149-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kevin Krotz (claimant) appealed a representative's February 2, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because he was not able to perform work with CNH America (employer) as of December 13, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 20, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time worker. He had a heart attack in November 2020, and returned to work without restrictions on November 16, 2020.

The employer laid the claimant off from December 7, 2020, through December 23, 2020, and from January 4, 2021, through January 7, 2021. The claimant earned holiday pay on December 24, 25, 28, 29, 30, 31, 2020, and January 1, 2021.

A disqualification decision was mailed to the parties' last known address of record on February 2, 2021. The claimant received the decision on or about February 13, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 12, 2021. The appeal was filed on February 13, 2021, which is after the date noticed on the decision. The claimant filed the appeal when he received 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 filed an appeal when he received the decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able and available for work.

Iowa Code section 96.4(3) provides:

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

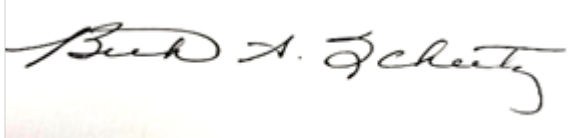
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has

been no evidence offered that the claimant is not able and available for work as of December 13, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The February 2, 2021, reference 01, decision is reversed. The appeal in this case was timely. Benefits are allowed as of December 13, 2020, provided the claimant is otherwise eligible.

A handwritten signature in cursive script, reading "Beth A. Scheetz". The signature is written in black ink on a white background. Below the signature is a horizontal line.

Beth A. Scheetz
Administrative Law Judge

April 23, 2021
Decision Dated and Mailed

bas/scn