

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI L. GAUNT
Claimant

APPEAL NO: 17A-UI-07589-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 06/11/17
Claimant: Appellant (2)

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 3, 2017, reference 02, decision that determined she was not able and available for work and denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 14, 2017. The claimant participated in the hearing. Doris Keldgord, Workforce Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she is able and available for work.

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 last known address of record on July 3, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 13, 2017. The appeal was not filed until July 27, 2017, which is after the date noticed on the disqualification decision (Department's Exhibit D-1). The claimant stated she did not receive the decision until July 27, 2017. Under these circumstances, the administrative law judge must find the claimant's appeal is timely.

The claimant was employed as a full-time printer operator for CDS Global from June 21, 2013 to April 21, 2017. She suffered a non-work related shoulder injury and was on short-term disability from September 7, 2016 through her separation date. She is restricted to lifting no more than 25 pounds and cannot lift over her head. Those restrictions were made permanent October 21, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

While the claimant is not able to perform her previous position, her restrictions do not prevent her from performing other types of work for other employers. She must apply for at least two positions per week and must accept an offer of work, provided it is suitable. Accordingly, benefits are allowed.

DECISION:

The July 3, 2017, reference 02, decision is reversed. The claimant's appeal is timely and she is able to work and available for work effective June 11, 2017. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn