

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**COLTON S CASON**  
Claimant

**APPEAL 18A-UI-10404-SC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/02/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Colton S. Cason (claimant) filed an appeal from the October 5, 2018, reference 07, unemployment insurance decision that denied benefits because he reported he was not able to and available for work. After due notice was issued, a telephone conference hearing was held on November 1, 2018 and was consolidated with the hearings for the appeals in 18A-UI-10403-SC-T, 18A-UI-10405-SC-T, 18A-UI-10406-SC-T, and 18A-UI-10407-SC-T. The claimant participated. The Department's Exhibits D1 through D5 were admitted into the record.

**ISSUES:**

Is the appeal timely?  
Was the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant mistakenly reported he was not able to and available for work when filing his weekly continued claim for the week-ending September 22, 2018. The claimant was in his town of residence and had no restrictions on his ability to or availability for work.

The unemployment insurance decision was mailed to the claimant's address of record on October 5, 2018 and contained a warning that any appeal was due by October 15, 2018. He did not receive the decision until October 17, 2018, when his landlord notified him that his mail had been delivered to the leasing office. The appeal was sent immediately after receipt of that decision.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and he was able to and available for work the week-ending September 22, 2018. Benefits are allowed.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion as the USPS delivered it to the wrong address. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal the same day of receipt. Therefore, the appeal shall be accepted as timely.

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 provides, in relevant part:

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.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was able to and available for work the week ending September 22, 2018. He mistakenly reported that he was not. Benefits for the week-ending September 22, 2018 are allowed.

**DECISION:**

The claimant's appeal is timely. The October 5, 2018, reference 07, unemployment insurance decision is reversed. The claimant was able to work and available for work for the week-ending September 22, 2018. Benefits are allowed for that week.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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