

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMADOU A ABOU
Claimant

APPEAL 17A-UI-04861-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/18/16
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 8, 2017, (reference 02), unemployment insurance decision that denied benefits based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on May 24, 2017. Claimant participated through CTS Language Link French language interpreter and was represented by Lorraine Gaynor, Attorney at Law. Law student Charles Paul observed. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective December 18, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision denying benefits was mailed to claimant at the last known address of record on February 8, 2017, which he received on February 14, 2017. The stated deadline for appeal is February 18, 2017. He appealed May 8, 2017, at the Iowa City IWD office. He called customer service on February 17, 2017, and told the representative he was waiting for an answer about the reference 01 separation decision. They did not tell him he must appeal if he disagrees to get benefits started again, but told him his benefits would start again the next week. He went to the Iowa City IWD office the same day he received the decision ("letter") on May 8, 2017. There are no French instructions on either side of the unemployment insurance decision. He did not understand the word "appeal" or the information related to that. He told the fact-finding interviewer that he is not going to school.

The administrative record reflects claimant has made at least two work searches each week from December 18, 2016, through the most recent claim week ending May 20, 2017. He has not been enrolled as a full-time student but only told the fact-finding interviewer he would like to go back to school for truck-driving. He is independently studying for his driver's permit. He has

not yet applied for Department Approved Training (DAT) pursuant to Iowa Admin. Code r. 871-24.39(2). He is seeking and is available for full-time employment.

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 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, 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 administrative law judge concludes that the failure to file an appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay pursuant to Iowa Admin. Code r. 871-24.35(2). Thus, the appeal is accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work, and made earnest searches for work during the period in question.

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 96.19, 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. 871-24.23 provides, in part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant has established that he is available for work and has made an earnest and active search for work so he is genuinely attached to the labor market. Accordingly, he is eligible for unemployment insurance benefits.

DECISION:

The February 8, 2017, (reference 02) unemployment insurance decision is reversed. The claimant's appeal is timely. He is able to work and available for work effective December 18, 2016. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs