

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLIE FRANKLIN**  
Claimant

**APPEAL NO: 17A-UI-11412-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES USA**  
Employer

**OC: 10/01/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 25, 2017, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 29, 2017. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issues are whether the claimant's appeal is timely and whether the claimant 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 October 25, 2017. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 4, 2017. That date fell on a Saturday so the appeal was actually due November 6, 2017. The appeal was not filed until November 7, 2017, which is after the date noticed on the disqualification decision. The claimant misplaced his decision and called the Department November 6, 2017, to ask about getting another copy of the decision and the due date. He filed his appeal upon receiving that information. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired as a full-time security officer for Securitas Security Services September 27, 2017. The employer did not offer him an assignment until he worked a one day position October 17, 2017. The employer then offered the claimant a driving assignment but the claimant has neuropathy and is not able to drive longer than one hour because his feet are painful and fall asleep which is dangerous when driving. The claimant started a full-time

assignment with the employer October 23, 2017, and has been working in that position since that date.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work effective October 1, 2017.

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.

The claimant was hired by the employer September 27, 2017, but not offered a position until October 27, 2017. The employer did offer the claimant an assignment where he would be required to drive for eight hours but due to his neuropathy the claimant did not feel it was safe to accept that position. The claimant was able and available to do any other type of work for the employer and was not hired specifically to drive. Instead, it was his understanding he would be working a security desk job where his neuropathy would not be a factor. Under these circumstances, the administrative law judge finds the claimant is able and available for work. Accordingly, benefits are allowed.

**DECISION:**

The October 25, 2017, reference 03, decision is reversed. The claimant's appeal is timely. The claimant is able and available for work effective October 1, 2017. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn