

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL T HANSEN**  
Claimant

**AVEKA NUTRA PROCESSING**  
Employer

**APPEAL 17A-UI-09899-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 12, 2017, (reference 01) unemployment insurance decision that denied benefits as of August 6, 2017. After due notice was issued, a hearing was held by telephone conference call on October 13, 2017. Claimant participated. Employer did not register for the hearing and did not participate. Official notice was taken of the administrative record, including claimant's benefit payment history and continued claims filing history, with no objection. Official notice was taken of administrative law judge decision 17A-UI-07828-SC-T and employment appeal board decision 17BUI-07828.

**ISSUE:**

Is the appeal timely?

Is the claimant able to work and available for work effective August 6, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification unemployment insurance decision was mailed to claimant's last known address of record on September 12, 2017. Claimant received the decision on September 15, 2017, within the appeal period. Claimant read the decision once he received it. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 22, 2017. Claimant testified he attempted to file an appeal online via his cellphone on September 16, 2017. Claimant did not receive a confirmation e-mail from this attempt. Claimant did not receive a notice that his appeal was filed successfully. On September 28, 2017, claimant had not received any notice about an appeal hearing and he called Iowa Workforce Development (IWD). An IWD employee informed him that IWD had not received his appeal. Claimant then re-filed another appeal. IWD received claimant's appeal on September 28, 2017, which is after the date noticed on the unemployment insurance decision.

Claimant started working full-time for the employer on March 30, 2015. When claimant started, he worked second shift (2:00 p.m. to 10:30 p.m.), Monday through Friday and some weekends.

Claimant transferred to third shift (10:00 p.m. to 6:30 a.m.) in 2016. Due to family issues, claimant requested to go to first shift in 2016. The employer put claimant on a swing shift (he worked either first shift or second shift). In May 2017, claimant wrote a letter to the employer informing it that he was only available Monday through Friday at the first shift hours. Claimant wrote in the letter that he would accept part-time work. The employer complied with claimant's request from May 2017 until July 7, 2017.

The last day claimant performed work for the employer was July 7, 2017. Claimant was then taken off the schedule for the next two weeks. On July 25, 2017, the plant manager told claimant he was being temporarily laid off. Claimant was temporarily laid off because of the hours he was requesting; claimant was requesting to work first shift, Monday through Friday only. Usually there are weekends involved, but at that time, claimant was not available to work weekends. Claimant has a special needs child and his daycare was only open during daytime hours during the week; not on the weekends.

Since August 6, 2017, claimant has been looking for work. Claimant is looking for full-time work Monday through Friday, during the time period 6:00 a.m. to 6:00 p.m. due to his child care issues. Claimant does not have any travel restrictions on the type of employment he would accept. Claimant testified he is making a minimum of two job contacts per week. The administrative record indicates that claimant made at least two job contacts for the week ending August 12, 2017, but he made zero job contacts for the weeks ending: August 19, 2017, August 26, 2017, September 2, 2017, September 9, 2017, September 16, 2017, September 23, 2017, September 30, 2017, and October 7, 2017. Claimant indicated that if his job contacts were recorded as zero, it was because he made a mistake when filing the weekly continued claims.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant'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, 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 appellant attempted to file an appeal in a timely manner on September 16, 2017, but it was not received by IWD. Immediately upon receipt of information to that effect, he filed a second appeal on September 28, 2017. Therefore, claimant's appeal shall be accepted as timely.

The next issue is whether claimant is able to work and available for work effective August 6, 2017. The administrative law judge concludes claimant is able to work and available for work effective August 6, 2017. Benefits are allowed effective August 6, 2017.

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. 871-24.22(2) 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.

(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.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(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.

Iowa Admin. Code r. 871-24.23(28) provides:

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

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

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 credibly testified that he is able to and available to work full-time during the time period 6:00 a.m. to 6:00 p.m., Monday through Friday. Claimant further credibly testified that he has made a minimum of two job contacts each week. Claimant credibly testified that any weeks that record he made zero job contacts were reported in error when he filed his weekly continued claims.

Claimant has not so limited his availability to render him not able and available for work. Claimant is able to work and available for work effective August 6, 2017. Benefits are allowed effective August 6, 2017.

Claimant is on notice that he must conduct at least two work searches per week and report his work searches when he files his weekly claims in order to retain eligibility for benefits.

**DECISION:**

The September 12, 2017, (reference 01) unemployment insurance decision is reversed. Claimant's appeal is timely. Claimant is able to work and available for work effective August 6, 2017. Benefits are allowed effective August 6, 2017, provided claimant is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/scn