

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALFONSO FLORES-GARCIA
Claimant

APPEAL 17A-UI-10267-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/16/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 9, 2017, (reference 02), unemployment insurance decision that denied benefits based upon claimant's ability to work. After due notice was issued, a telephone conference hearing was scheduled to be held on October 23, 2017. Claimant participated. Claimant's Exhibit A was received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective July 16, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the claimant's address of record on August 9, 2017. The claimant did not receive the decision. In September 2017, claimant contacted the agency to inquire about his claim but was not given a clear answer. In October 2017, claimant again contacted the agency about his claim. On October 6, 2017, an IWD employee emailed claimant a copy of the August 9, 2017 (reference 02) decision denying benefits. Claimant filed an appeal on October 9, 2017, within ten days of receiving the decision.

In May 2016, claimant had surgery on his wrist due to a work related injury. Claimant was released from his doctor's care to return to work with no restrictions. On September 1, 2016, another doctor certified that claimant had no permanent injury as a result of the injury. Claimant was later separated from employment with his employer. Claimant currently has no restrictions on his availability for or ability to work.

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 § 96.6(2) provides, in pertinent part:

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.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. 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 appellant filed the appeal within ten days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able to and available for work. The administrative law judge concludes he is.

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(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.

Since claimant was released to return to work with no restrictions and has no other restrictions on his availability or ability to work, he is considered able to and available for work effective July 16, 2017.

DECISION:

The August 9, 2017, (reference 02) unemployment insurance decision is reversed. The appeal is timely. The claimant is able to work and available for work effective July 16, 2017. Benefits are allowed, provided he is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn