

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECIL O TILLMAN
Claimant

APPEAL NO. 14A-UI-12426-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA, LLC
Employer

OC: 11/02/14
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 a representative's decision dated November 21, 2014 (reference 01) which denied unemployment insurance benefits as of November 2, 2014; finding that the claimant's lack of transportation was unduly limiting his availability for work. The claimant's appeal was to be received by the Appeals Section or postmarked by December 1, 2014. The appeal was not received until December 3, 2014. Notice was provided on the timeliness issue. The parties waved notice on whether the claimant was able and available for work under section 96.4(3), the Iowa Employment Security Law. A telephone hearing was held on December 22, 2014. Claimant participated. The employer participated by Ms. Victoria Benson, Executive Assistant Human Resource Department.

ISSUES:

The issues are whether the claimant's appeal should be considered timely and whether the claimant was able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Cecil Tillman attempted to file a timely appeal from the representative's decision dated November 21, 2014 (reference 01). However, his appeal was delayed because inaccurate information provided by an Agency representative. As soon as Mr. Tillman was informed that his appeal had not been received, he acted immediately to refile his appeal; and did so effective December 3, 2014.

Mr. Tillman has been employed as a flagger for Flagger Pros USA, LLC for numerous years, working as a seasonal flagger for the company. Mr. Tillman completed an assignment with Flagger Pros USA, LLC on October 29, 2014. The claimant was offered another assignment to begin November 2, 2014; however, due to a communication error Mr. Tillman was unable to be given that assignment. The employer was attempting to secure transportation for Mr. Tillman to the job site; however, lack of communication between the parties caused Mr. Tillman not to be assigned to the project. The employer agrees that Mr. Tillman has been consistently able and available for work, and has not limited his availability for work in any manner.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant's appeal should be considered timely. It does. The administrative law judge finds that the claimant's failure to file an appeal within the time prescribed by the Iowa Employment Security Law was due to the error of an Agency representative and, therefore, his appeal should be considered timely.

The next question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work within the meaning of the Employment Security Law. It does.

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".

An otherwise ineligible claimant is eligible to receive benefits with respect to any week, only if the evidence indicates that the claimant is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the availability requirement of 871 IAC 24.22(2), an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse; and must be generally attached to the labor market.

The administrative law judge concludes, based upon the evidence in the record, that Mr. Tillman is able and available for work, and that the claimant's lack of transportation did not unduly limit his availability for work or the potential job assignment that was to take place as of November 2, 2014. The employer was willing and was attempting to secure transportation for Mr. Tillman to that job site; however, a miscommunication between the parties provided Mr. Tillman from being given the job assignment. The administrative law judge concludes that the claimant is able and available for work within the meaning of the Employment Security Law, as of November 2, 2014. He is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of the law.

DECISION:

The representative's decision dated November 21, 2014 (reference 01) is reversed. The claimant's appeal is considered timely; the claimant is able and available for work effective November 2, 2014. He is eligible to receive unemployment insurance benefits, providing he has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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