

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN D SCOTT**  
Claimant

**APPEAL NO. 08A-UI-05422-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST DRYWALL CO INC**  
Employer

**OC: 03-30-08 R: 02**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 15, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 24, 2008. The claimant did participate. The employer did participate through Megan Tolle, Human Resources Manager.

**ISSUES:**

Was the claimant able to and available for work for the week ending April 5, 2008?

Did the claimant file a timely appeal?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was in jail from May 8 through May 31 and was hospitalized with a spider bite from June 5 through June 10. He did not have an opportunity to file an appeal until he was released from the hospital by which time the date for the appeal had already passed.

The claimant took a framing class through the union from March 31 through April 3. He was not able to work that week because he was in class. The employer had work available for the claimant. The employer did not require the claimant to take the class; the claimant chose to on his own.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in time for him to file a timely appeal. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 31 through April 3, 2008.

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".

Work was available for the claimant but he chose not to work but to take a framing class. The employer did not require the claimant to take the class. Accordingly, benefits are denied.

**DECISION:**

The May 15, 2008, reference 02, decision is affirmed. The claimant's appeal is timely. The claimant is not able to work and available for work effective March 31, 2008 through April 3, 2008. Benefits are denied for the one-week period ending April 5, 2008.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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