

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**ABDULLAHI M A UGAS**  
Claimant

**APPEAL 17A-UI-00654-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/09/16  
Claimant: Appellant (2)**

---

Iowa Code § 96.6(1) – Filing Claims  
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 December 8, 2016, (reference 04) unemployment insurance decision that denied benefits based upon the claimant being unable and unavailable for work. The claimant was properly notified about the hearing. A telephone hearing was held on February 10, 2017. The claimant participated personally and through two Somali interpreters with CTS language link.

Upon the closing of the hearing, the claimant continued to have multiple questions about his claim filing and had been unable to receive assistance at his local office. He most recently visited February 9, 2017. The administrative law judge closed the hearing record but allowed the claimant and interpreter to remain on the line and an IWD representative joined the call to answer the claimant's questions. The administrative law judge did not listen to the subsequent discussion (or hearing record containing the discussion) and wholly disregarded any information exchanged between the claimant and IWD representative when making her decision.

Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

|

s the appeal timely?

Is the claimant able to work and available for work effective October 30, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has lived at his mailing address since 2012 and shares the mail with four other roommates. A notice of initial decision dated November 29, 2016, (reference 03) was mailed to

the claimant, denying him benefits because he failed to report as directed to the department. The letter contained a warning that an appeal must be filed by December 9, 2016. The claimant is unsure when he received the decision but read it and understood it was unfavorable. Another notice of decision was mailed December 8, 2016, (reference 04), stating the claimant did not meet the availability requirements for the week ending November 5, 2016. This decision is at hand for this case. The claimant received that decision but is unsure when. The decision contained a warning that any further appeal must be filed by December 18, 2016. He attempted to file "two or three" appeals in December at the local office in response to them but they were not received by the Appeals Bureau. The claimant could not recall the exact dates of attempting to submit the appeals. The claimant then received a third decision dated January 9, 2017, (reference 05), stating he was overpaid benefits. The claimant filed another appeal at the local office on January 16, 2016 (Department Exhibit D-1).

During the week ending November 5, 2016, the claimant utilized the local office's assistance in the weekly filing of his claim. This is confirmed by the administrative record. During the recording of his claim, it was marked that he was not able to and available for work. The claimant was able to and available for work and believes there was a mistake or miscommunication with the language barrier. The claimant is currently searching for full-time employment, in and around Postville. He has applied for companies including Amazon and Agristar. The claimant's car is currently inoperable but he has transportation from friends for employment within the vicinity of Postville (but cannot accept work out of the state or far away). He has no medical restrictions or other limitations to employment.

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

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Based on the evidence presented, the claimant made a good faith effort to file a timely appeal by way of visiting his local office. The claimant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

Further, the administrative law judge concludes that the claimant is able to work and available for work.

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(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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Based on the evidence presented, the claimant has satisfactorily demonstrated that he is able to, available for, and earnestly seeking work. Benefits are allowed.

**DECISION:**

The December 8, 2016, (reference 04) unemployment insurance decision is reversed. The claimant filed a timely appeal. The claimant is able to work and available for work effective October 30, 2016. Benefits are allowed, provided he is otherwise eligible.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/rvs