

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUSE HADZALIC
Claimant

APPEAL 17A-UI-08671-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/18/17
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 28, 2017, (reference 05) decision that denied benefits effective July 9, 2017. After due notice was issued, a hearing was held by telephone conference call on September 19, 2017. Claimant participated.

ISSUE:

Did the claimant file a timely appeal?

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from his employment on June 19, 2017. The agency allowed benefits based upon his separation from employment. At the time of his separation, he had been working under some limited work restrictions while waiting to have minor knee surgery on July 11, 2017. The claimant filed a claim for benefits with an effective date of June 18, 2017. The claimant was physically able to work at his regular job from June 18, until his knee surgery on July 11, 2017. After his surgery, his treating physician kept him off work until August 5 when he was released to return to work without any work restrictions.

The claimant does not read English well enough to understand the appeals deadline. As soon as the claimant realized he needed to appeal, he did so.

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 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 claimant has a limited ability to read in English. As a consequence he was unable to understand the necessity of filing a timely appeal. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work for the time period from June 18, 2017 through the week ending July 8, 2017 and again from August 6, 2017 onward.

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.

The claimant was working within his work restrictions until his separation from his employer on June 18, 2017. The claimant continued to be available to work under his restrictions from June 18, until his surgery on July 11. The claimant was able to and available for work from June 18, through the week ending July 8, 2017. The claimant was not able to and available for work for the majority of the week ending July 15, 2017. Thereafter the claimant's treating physician took him off work to recover for the four week period ending August 5, 2017. The claimant was again able to work without restriction effective August 6, 2017. Accordingly, benefits are allowed for the three week period ending July 8, 2017 and then again effective August 6, 2017.

DECISION:

The July 28, 2017, (reference 05) decision is modified in favor of the appellant. The claimant did file a timely appeal. The claimant is able to work and available for work for the three week period ending July 8, 2017 and then again effective August 6, 2017. The claimant was not able to and available for work for the four week period ending August 5, 2017.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs