

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK A GOODVIN

Claimant

APPEAL NO. 08A-UI-11012-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF DES MOINES

Employer

**OC: 08/17/08 R: 03
Claimant: Appellant (4-R)**

Section 96.5(1)d – Separation Due to Injury
Section 96.6(2) – Timeliness of Appeals
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Rick Goodvin filed an appeal from a representative's decision dated October 27, 2008, reference 03, which denied benefits on a finding that his separation was not caused by his employer. After due notice was issued, a hearing was held by telephone on December 9, 2008. Mr. Goodvin participated personally. The employer participated by Jeanne Piel, Account Manager.

ISSUES:

The first issue in this matter is whether Mr. Goodvin's appeal should be deemed timely filed. If it is, the issue then becomes whether he was separated from employment for any disqualifying reason. There is also an issue of his ability to and availability for work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Goodvin at his address of record on October 27, 2008. He read the decision and understood that there was an appeal deadline. He interpreted the decision to mean that he would need to reapply once he was released by his doctor to return to work. He reopened his claim effective November 2, 2008, after his doctor released him for work. When he did not hear anything further, he checked with his local office on November 21 and was advised that he needed to file an appeal. He did so the same day.

Mr. Goodvin worked for Manpower from March 17 until August 5, 2008. He was at all times assigned to work full time for Bunn-O-Matic. On August 6, he gave notice that he had sustained injuries in a motorcycle accident. On August 11, he notified the employer that he had a broken clavicle and might be off work for six weeks or more. He was released to return to work without restrictions on November 4 and contacted Manpower on November 5. There was no work available at that time. Mr. Goodvin has not been offered work by Manpower at any point since November 4, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Goodvin's appeal should be considered timely filed. He had ten days in which to appeal the representative's October 27, 2008 decision. Iowa Code section 96.6(2). The decision clearly advises that it will become final if no appeal is filed by the designated due date of November 6, 2008. Mr. Goodvin understood the decision and that there was an appeal deadline. Instead of filing an appeal by the due date, Mr. Goodvin reapplied for benefits. By his own testimony, he did not reapply until November 10, after his appeal was due. His actions were not based on any advice from Workforce Development. The evidence failed to establish good cause for not filing an appeal until November 21, 2008.

The administrative law judge must next determine the effect, if any, of the failure to file a timely appeal. The representative's decision disqualified Mr. Goodvin from receiving benefits as of the effective date of his claim, August 17, 2008. However, it only disqualified him until such time as he complied with the provisions of Iowa Code section 96.5(1)d. It was, in essence, an open-ended disqualification. It is concluded that, in spite of the untimely appeal, Workforce Development retained jurisdiction on the issue of whether Mr. Goodvin has subsequently satisfied the requirement of section 96.5(1)d.

Mr. Goodvin left his employment with Manpower on August 6, 2008 because of an injury suffered away from work. He was advised by his doctor that he would need to remain off work for at least six weeks. It is concluded, therefore, that he was off work on the advice of a licensed and practicing physician. It is undisputed that he gave the employer immediate notice of the need to be absent. It is likewise undisputed that he re-offered his services to Manpower after he received a complete release to full duty and that no work was available. For the above reasons, the administrative law judge concludes that Mr. Goodvin satisfied the requirements of section 96.5(1)d as of the week in which he was released to return to work. Accordingly, benefits are allowed as of the Sunday of the week in which he was released, November 2, 2008. Based on the foregoing, Mr. Goodvin would not be entitled to benefits prior to November 2 even if he had filed a timely appeal.

The hearing notice in this matter also listed the issue of Mr. Goodvin's availability for work. Because the representative's decisions did not deal with the issue of his availability, the issue is not affected by the failure to file a timely appeal. In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Mr. Goodvin had not been released to work when he filed his claim effective August 17, 2008. He was not released until November 4. Because he was not able to work from August 17 through November 1, he is not entitled to benefits during his period. The administrative law judge notes that even if he were found to be able to work during this period, he would still be disqualified from benefits during this period because of the requirements of section 96.5(1)d, as discussed above.

After considering all of the evidence, the administrative law judge concludes that Mr. Goodvin is not entitled to benefits for the period from August 17 through November 1, 2008 as he had not satisfied the requirements of Iowa Code sections 96.5(1)d and 96.4(3). This matter shall be remanded to Claims to determine if Mr. Goodvin will be required to repay any benefits received prior to November 2, 2008.

DECISION:

The representative's decision dated October 27, 2008, reference 03, is hereby modified. Mr. Goodvin is denied benefits effective August 17, 2008 as he had not satisfied the requirements of section 96.5(1)d. Benefits are allowed effective November 2, 2008, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Goodvin will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css