

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA J VANDE KIEFT**  
Claimant

**APPEAL NO: 13A-UI-09445-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 09/16/12  
Claimant: Appellant (2)**

871 IAC 24.35(2) – Appeal Delay  
Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 12, 2013, reference 02, that held she is not eligible for unemployment benefits, because she does not meet the availability requirements of the law effective May 26, 2013. A telephone hearing was held on September 19, 2013. The claimant participated. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on June 12, 2013 with an appeal deadline date of June 22 (Saturday) that is extended to the next business day June 24. The claimant submitted an appeal to a local workforce representative at the Ottumwa, Iowa campus on July 5, 2013. The department representative faxed claimant's appeal to UI Appeals on August 19. Claimant was told the representative was going to submit her appeal.

Claimant filed an additional unemployment claim effective May 26, 2013. Although she was not physically unable to do work commensurate with her most recent employment, she has a college nursing degree and she is currently searching for work in this area. She has no medical restriction that would prevent her from working in this area.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes claimant filed a timely appeal. The appeal delay was due to department err in failing to submit it when it was received.

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".

The administrative law judge further concludes claimant is able and available to perform some gainful employment for which is qualified and she does meet the availability requirements of the law effective May 26, 2013.

While claimant might have some physical limitation that prevents her from working for her former employer, she has no medical restriction that would preclude her from working as a nurse or nurse management. Claimant needs only to be able and available to work some gainful employment.

**DECISION:**

The department decision dated June 12, 2013, reference 02, is reversed. The claimant filed a timely appeal. Claimant does meet the availability requirements of the law as of May 26, 2013. Benefits are allowed.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs