

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANA CANNON
Claimant

APPEAL 15A-UI-05136-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/19/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2015, (reference 05), unemployment insurance decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 8, 2015. Claimant participated. Department exhibits D-1 was entered and received into the record.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant able to and available for work for work effective December 14, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of October 19, 2014. Unfortunately, thereafter she began experience serious health problems for which she was hospitalized and underwent surgical treatment. Beginning with the week ending December 20, 2014 through the week ending March 14, 2015 the claimant reported during her weekly claim that she was not able to and available for work. The IWD system continued to pay the claimant unemployment insurance benefits.

The claimant received requests for information from the agency and twice accurately reported to the agency that she was not able to and available for work. The claimant called the agency for information and was told to continue to file and to report until she received a decision.

The claimant received the decision denying her benefits and finding her overpaid unemployment insurance benefits and tried to file her appeal online. The system would not work for her. She contacted the agency for assistance but was not given the correct

information on how to file an appeal. The claimant filed the appeal as soon as she was given accurate information on how to do 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 § 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 attempted to file online and sought help from IWD employees. She filed her appeals as soon as she was given accurate information on how to do so. Under these limited circumstances that administrative law judge concludes that the claimant did file a timely appeal.

For the reasons that follow, the administrative law judge concludes that the claimant is not 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. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant was ill and physically unable to effective December 14 2014. Accordingly, benefits are denied.

DECISION:

The March 13, 2015 (reference 05) decision is affirmed. The claimant is not able to work and available for work effective December 14, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs