

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A GARRETT
Claimant

APPEAL NO: 17A-UI-06182-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAKERS PRIDE INC
Employer

OC: 04/30/17
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The claimant, filed a timely appeal from a representative's decision dated May 15, 2017, reference 02, was denied unemployment insurance benefits as of April 30, 2017 finding that the claimant was not able to perform work due to illness. The claimant's appeal was to be postmarked or received by the Appeals Section by May 25, 2017. The appeal was not received until June 16, 2017, this is beyond the statutory time limit. The hearing was scheduled, notices were sent to the parties for a telephone conference room on June 30, 2017. Claimant participated. The employer participated by Ms. Wanda Carmichael, Mr. Richard McCoy and Mr. Wesley Smith.

ISSUE:

Whether the claimant filed a timely appeal and whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification decision was sent to the claimant's last known address of record on May 15, 2017. The claimant did not receive the adjudicator's decision because it was not delivered by the US Postal Service. Later, the claimant contacted Iowa Workforce Development and at that time learned that a disqualification decision had been made. The claimant immediately filed an appeal on June 16, 2017.

The administrative law judge concludes that the claimant's failure to file a timely appeal by the time prescribed by the Iowa Security Law was not due to any agency error or error on the part of Mr. Garrett but due to delay or other action of the US Postal Service pursuant to 871 IA C24.35 (2). The administrative law judge concludes that the claimant's appeal should be considered timely.

The claimant was employed by Baker's Pride, Inc. from April 7, 2012 until April 26, 2017 when he was discharged for excessive unexcused absenteeism. Mr. Garrett had been repeatedly

unable to report for scheduled work due to illness due to a gastrointestinal malady that often caused Mr. Garrett to be ill and unable to work.

Mr. Garrett filed an unemployment insurance claim effective April 30, 2017. At the time that he filed his claim for benefits he continued to be played by his gastrointestinal malady and not able to perform work.

Mr. Garrett testified that as of the week ending May 13, 2017 his medical condition has drastically improved because of a change in medications and that he is able to actively and earnestly seek re-employment as of that date and has been doing so.

REASONING AND CONCLUSIONS OF LAW:

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".

An otherwise eligible claimant is eligible to receive benefits in respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing the claimant meets the requirements. 871 IAC 24.22.

To satisfy the ableness requirement, the 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." Iowa Admin. Code r. 871-24.22(1). With respect to the illness or injury, each case is decided on an individual basis, recognizing that various work opportunities present different physical requirements. Statement from a medical practitioner is considered to be predefactiony, evidence of the physical ability of an individual to perform work required. The statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence.

In the case at hand, the claimant testified under oath that due to a change in medications, his medical condition has substantially improved as of the weekend ending May 13, 2017 and that he is actively and earnestly seeking reemployment by contacting prospective employer's each week that he has claimed unemployment insurance benefits.

The claimant's testimony is credible and not inherently improbable and the claimant testified with specificity regarding his change in medications and its effect on his ability to work.

The administrative law judge concludes that the claimant has met the able requirements of the Iowa Employment Security Law as of the week ending May 13, 2017 and is eligible to receive

unemployment insurance benefits providing that he meets all of the eligibility requirements of Iowa Law.

DECISION:

The representative's decision date May 15, 2017, Ref 02 is affirmed as modified. The portion of determination holding him ineligible receiving unemployment insurance benefits beginning April 30, 2017 is affirmed. The decision is modified to find that the claimant is able to perform work effective the week ending May 13, 2017. Claimant is eligible to receive unemployment insurance benefits after that date providing that he meets all the requirements of Iowa Law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn