

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY P CLARK**  
Claimant

**APPEAL NO. 12A-UI-06371-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHENHALL'S STAFFING SERVICES INC**  
Employer

**OC: 07/24/11**  
**Claimant: Appellant (2)**

Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 2, 2011, reference 05, that concluded he was not able to work effective August 7, 2011. A telephone hearing was held on June 25, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Gowdy participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits after his employment was terminated due to excessive absenteeism on July 25, 2011. The claimant was in a car accident in early July 2011, and as a result of the injury, his doctor imposed lifting restrictions. On July 25, 2011, the claimant was examined by his doctor and was released to work without restrictions.

After filing for unemployment insurance, the claimant actively looked for work and applied for at least two jobs each week. He was able to perform the jobs he applied for.

An unemployment insurance decision was mailed to the claimant on December 2, 2011. The decision disqualified the claimant and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by December 12, 2011.

The claimant did not receive the decision within the ten-day period for appealing the decision. He had moved and informed the Agency of his new address, but the decision was sent to his old address. He filed a written appeal on May 31, 2012, after he received an overpayment decision issued on May 21, 2012. This was the first notice the claimant had about the disqualification decision.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. In this case, the failure to file a timely appeal was due to an Agency error in sending the decision to his old address, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The appeal is deemed timely.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The evidence establishes that as of July 24 and afterward, the claimant was able to and available for work without restrictions. He is qualified to receive benefits.

**DECISION:**

The unemployment insurance decision dated December 2, 2011, reference 05, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css