

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE W GREGORY**  
Claimant

**APPEAL NO: 17A-UI-13071-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 01/01/17**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 4, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 11, 2018. The claimant participated in the hearing with Attorney Dennis Currell. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issues are whether the claimant's appeal is timely and whether he is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on December 4, 2017. The claimant did not receive the decision. He became aware of the decision during a fact-finding interview regarding his separation from employment and immediately went to the Department and filed an appeal December 19, 2017. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time plant set-up operator for Whirlpool Corporation until October 5, 2017. He had a second shoulder surgery September 5, 2017, and following that surgery his psychiatrist mandated that he not return to work at Whirlpool. The claimant does not have any medical restrictions in place that prevent him from working anywhere else at this time.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able 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. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant has no medical restriction or other limitation on his employability at any employer except Whirlpool Corporation effective October 30, 2017. Because the claimant is able to perform some other type of work, he is considered able and available for work. Accordingly, benefits are allowed.

**DECISION:**

The December 4, 2017, reference 02, decision is reversed. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn