

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D GRAY
Claimant

APPEAL NO. 07A-UI-11176-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/03/07 R: 02
Claimant: Appellant (5)**

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.2(1)g – Failure to Report – Continued Claim
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 16, 2007, reference 04, decision that found he failed to report weekly claims for the nine weeks ending August 4, 2007. After due notice was issued, a hearing was held by telephone conference call on December 18, 2007. Claimant participated.

ISSUES:

Whether claimant's appeal was timely.

Whether claimant failed to report, via voice response, weekly claims for the nine-week period ending August 4, 2007.

Whether claimant was able and available for work.

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 June 3, 2007. He had elective (non-work-related) shoulder surgery on May 21 and was released to work with restrictions on June 4, but employer did not have light duty work available for non-work-related medical conditions. The local office advised claimant he could not file a claim for weekly benefits until he went back to work. He was released to full duty work on August 2, and employer returned him to his regular duties.

When claimant reopened his claim effective October 7, 2007, after returning to work as instructed by the local office, and requested benefits dating back to his shoulder surgery and for the weeks he was off work but did not call in weekly claims (since he was told not to file until he returned to work), the local office representative told him the information would be sent to the Des Moines IWD office; but, contrary to claimant's understanding, no indication was made that he wanted to file an appeal. Both claimant and his spouse work during the local office hours of 9 a.m. to 3 p.m., so it was difficult for them to call or go to the local office in person. When claimant did not receive a response, he went again to the Marshalltown local office and was told the copies were sent to Des Moines but their location was unknown. Again, no appeal was suggested or filed on his behalf. The third time

claimant pursued the matter with the Marshalltown office, claimant's impression was that they acted like they did not know what he was talking about. At no point did anyone explain the issues in detail.

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 relied upon the local office when he was told the information would be sent to Des Moines. His interpretation of that assurance as an appeal was reasonable given the circumstances. Immediately upon receipt of information that an appeal was not filed, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant has established a good cause reason for having failed to report as directed.

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".

871 IAC 24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting and the payment of benefits, provided the individual is otherwise eligible, shall be on a biweekly basis by mail if the claimant files a Form 60-0151.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

871 IAC 24.2(1)g provides:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has furnished to the department a signed Form 60-0151, Claim for Benefits, or filed a voice response continued claim. The biweekly claim for benefit payment shall be mailed not earlier than noon of the second Saturday of the biweekly reporting period and, unless reasonable cause can be shown for the delay, not later than Friday of the week immediately following the biweekly reporting period. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

Since claimant was given erroneous advice not to file a weekly voice response claim until after he had returned to work, his failure to do so is excused. However, the administrative law judge concludes that the claimant is not able to work and available for work from May 21 through August 2, 2007.

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician had not released the claimant to return to work with or without restriction, the claimant has not established his ability to work for that period. Employer is not obligated to accommodate a non-work-related medical condition; thus, until claimant was released to perform his full work duties, he was not considered able to or available for work. Since claimant returned to work immediately upon his full release, he is not considered unemployed. Benefits are withheld until such time as the claimant becomes unemployed, either permanently or temporarily, and is otherwise eligible.

DECISION:

The November 16, 2007, reference 04, decision is modified without change in effect. The claimant did file a timely appeal. His failure to file weekly voice response claims is excused; however, he is not eligible for benefits effective June 3, 2007 through August 2, 2007, since he was not fully released to work. Nor is he eligible for benefits effective August 3, since employer returned him to work immediately.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw